

THE
Power, Jurisdiction and Priviledge
OF
PARLIAMENT;
AND THE
ANTIQUITY
OF THE
House of Commons
ASSERTED.

OCCASION'D
By an Information in the *Kings Bench*, by the Attorney
General, against the Speaker of the House of Commons.

As also a Discourse concerning the

Ecclesiastical Jurisdiction

IN THE
REALM of ENGLAND.

Occasion'd by the
Late Commission in Ecclesiastical Causes.

By Sir *ROBERT ATKYNS*,
Knight of the Honourable Order of the *Bath*, and
late one of the Judges of the Court of *Common-Pleas*.

L O N D O N,
Printed for *Timothy Goodwin*, at the *Maiden-Head*, against
S. Dunstons Church in *Fleetstreet*. 1689.

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IN THE
KINGS BENCH.

TRIN. 36 CAROL. II.

BY

INDICTMENT.

Middlef.

THe Kings Attorney informs the Court ;
That W.W. Esq; being a Pernicious and Seditious
Man, and Contriving and Practising Falsly, Ma-
liciously and Seditiously, to disturb the Peace and Qui-
et of the Kingdom :

And to stir up Sedition, and to procure Ill-Will between the King
and his Subjects :

And to bring the D. of Y. into Contempt with the King and his Sub-
jects.

In order to the Compassing of all these,

The ninth of November, 34 Car. 2, In the Parish of S. Martins in
the Fields, in the County of Middlesex,

He the said W. W. did with Force and Arms, Falsly, Unlawfully,
Unjustly, Wickedly, Maliciously, Scandalously, Seditiously and
Devillishly, for his own Lucre,

Cause and Appoint a certain False, Scandalous, Seditious and Infam-
ous Libel; entituled, The Information of Thomas Dangerfield,
Gentleman, to be Printed and Published.

In which Libel, (among other things) are contained, as followeth :

The Information of Thomas Dangerfield, Gentleman, &c.

(the Contents of it have been read, and need no Repetition.)

In Contempt of the Law, and to the ill Example of others; and
against the Peace, and the Kings Crown and Dignity.

And the King's Attorney prays Proceſs against him, That he may be
brought in to answer it.

B

The

The Defendant pleads to the Jurisdiction of this Court,
and says,

That by the Law and Custom of Parliament,

The Speaker of the House of Commons sitting, the Parliament, according to the Duty of his Office, as Servant to the House, ought, and ever has accustomed, to Speak, Sign and Publish such Proceedings of that House, and in such manner as he shall be ordered by the Commons so assembled :

And that such Speaking, Signing or Publishing, according to the Law and Custom of Parliament, are the Act and Doing of the Commons themselves ; and hath ever been so accepted and taken, and not as the Speakers own Acting or doing.

And that the Speaker, for such Speaking, Signing or Publishing by him made or done, sitting the Parliament ; and by their Order, ought not to answer in any other Court or Place, but in Parliament.

He further says, That at the Sessions of Parliament at *Westminster*, the 15th. of *March*, 31 *Car. 2.* held by Prorogation,

One *William Viscount Stafford* and others, were impeached by the Commons, before the Lords, according to the Law and Custom of Parliament, of High Treason,

For a most execrable Conspiring to kill the King,

And to Alter and Subvert the Ancient Government, and the Laws of the Realm.

And to Suppress the true Religion established in this Kingdom.

And to root up and destroy the Professors of it.

And that afterwards, in the Sessions of Parliament, held by Prorogation, at *Westminster*, 21 *Octob. 32 Car. 2.*

The said *Viscount Stafford*, at the Prosecution of the Commons, was Tried, and Convicted, and Attainted, in due Form of Law, by the Temporal Lords then assembled in Parliament, for the High Treasons, of which he was so Impeached by the Commons,

As by the Record of Parliament does appear.

He further says, That in the opening of that Session,

The King, in his Speech to the Lords and Commons, charged them to pursue a further Examination of that Conspiracy, with a Strict and *Impartial* Enquiry.

And the King then told them, That he did not think himself nor them secure till that matter was thoroughly done.

He further says, That in the same Sessions of Parliament, last mentioned, which continued at *Westminster* till 10 *Jan. 32 Car. 2.* both Houses of Parliament, in pursuance of his Majesties said Direction, made a Strict and *Impartial* Enquiry after that Conspiracy.
And

And upon that Enquiry, in the same Sessions of Parliament, last mentioned, the said *Thomas Dangerfield*, in the said Information named, did upon his Oath exhibit to the Lords in Parliament, the said Libel (entituled, *The Information of Thomas Dangerfield, Gentleman*) as his true Information of that Conspiracy: And delivered it to the Lords, which was and is there Recorded, as by the Record thereof in Parliament does appear.

And he also delivered it to the House of Commons in the same Parliament, at the Bar of that House.

And the said Commons then ordered, That that Information (among others, then before given in at the Bar of that House, touching the said Plot) should be entred in their Journal.

And that all the said Informations should be printed, being first Perused and Signed by their Speaker:

And that the Speaker should name and appoint the Persons that should print them:

And that *Thomas Dangerfield* should have the Benefit of the Printing of his Information.

And the Defendant further says; That he was a Member of the House of Commons during all the Sessions of Parliament, last mentioned, and was duly Elected and Made their Speaker, and was so all that Sessions.

And that by virtue of, and in pursuance of the said Order, as Speaker of the House, afterwards, during that Session, *sc.* 10 Nov. 32 Car. 2. in the Parish of *S. Martins in the Fields*, in the said County of *Middlesex*,

He did Peruse the said Information, so exhibited by the said *Thomas Dangerfield* to the Commons, and he Signed it by putting to it his Name, *viz.* *William Williams*, Speaker of the House of Commons.

And then and there appointed *Thomas Newcomb* and *Henry Hills* (being the Kings Printers) to Print that Information, according to the said Order of the House of Commons.

And thereupon the said Information afterwards, and during that Session, *sc.* 10 Nov. 32 Car. 2. was printed by those two Printers.

And that the said *Thomas Dangerfield* had the Benefit of that Printing, according to the Order of the House.

Which Setting to of his Name, and Appointment of the said Printers to Print the said Information, are the same Causing and Appointing of the Printing and Publishing of the Libel in the Attorney General's Information mentioned.

Absque hoc, That he is Guilty of the Premises in the said Attorney General's Information specified, on the ninth of *November*, in the said Information specified, or at any other Time after the said Session of Parliament, or before it; or otherwise, or in any other manner than as he has above alledged.

And

(4)

And this he is ready to aver, &c.

Wherefore, and for *that what he so did, was done by him as Speaker of the House of Commons, in Parliament, and by their Order, and Sitting the Parliament,*

He demands the Judgment of this Court, Whether this Court will take any further cognizance of this Matter.

Kings

Kings Bench :

*The Kings Attorney is Plaintiff, and W. W. Esq;
Defendant, in an Information for a Misdemeanour.*

*The Information sets forth, &c. vide the Brief of
the Record.*

THe Information taken singly by it self, (without the Introduction.
Defendants Plea) contains a very Severe and Hea-
vy Charge in it, against the Defendant, set out
with the highest Aggravations :

And this against a Gentleman of the Profession of
the Law, and one who hath had the Honour to be Speaker of se-
veral Parliaments.

We may observe in this Information the worst of *Adjectives*
or Epithites fastned upon the Defendant : It stiles him, A *Perni-
cious* and *Seditious* Man.

It charges him with the worst of *Actions* ; sc. *Stirring up of
Sedition, Disturbing the Peace of the Kingdom, endeavouring to
procure Ill-will between the King and his Subjects ; and to bring the
D. of Y. into Contempt with the King and his Subjects ; and with
the Printing and Publishing a False, Scandalous, Seditious and
Infamous Libel.*

These Crimes and Actions are set out in Mr. Attornies Informa-
tion with the worst of *Adverbs* ; and with a great Heap of them
together ; viz. That these things were done by the Defendant,
*Falsly, Unlawfully, Unjustly, Wickedly, Maliciously, Scandalously,
Seditiously and Devillishly.*

And to add (if possile) to all this, it is charged to be done
out of one of the basest Principles : Out of *Malice* ; and for one
of the most Sordid and Odious Ends, viz. For *his own Lucre.*

It may further be observed, That the Information does not
alledge or affirm, That there is any such Person in the World
as *Thomas Dangerfield* (though it mention the Name ;) nor
that any such Person did ever Frame or Draw up any such Scan-
dalous and Libellous Book or Information, as is mentioned in
Mr. Attornies Information.

But (for all that, Mr. Attorney shews) the Name of *Thomas Dangerfield*, may be but a feigned or borrowed Name, and that the Defendant may be the Author and Composer of this Libel, as well as the Publisher.

And one would not imagine, upon reading Mr. Attorney's Information, that any thing of these Matters, thus charged, was ever transacted in Parliament : But Mr. Attorney gives them another Date, both of Time and Place. He does not lay the Scene at *Westminster*, but at *S. Martins in the Fields*, and he times it to the Year 1682. whereas there was no Parliament in that Year. This was warily done.

Time and Place not material, unless the Defendant make them so, by his Plea, (as here.)

Thus the Case stands upon Mr. Attorney's Information, and should it be left here, it would be a woful Case with the Defendant ;

But as *Solomon* says in his *Proverbs* ;

The first in his own cause is just, then comes the other party and enquires into him.

The plain English of which is (as we use to say) *One Tale is good till another is told.*

Plea.

The Defendant, in his Plea, states the matter truly and fully, and tells us, That there is nothing true in this Information exhibited against him, save only that there was such an Information of *Dangerfields*, but that the Defendant was none of the Author.

It was drawn up and delivered in to both Houses of Parliament, first to the Lords, upon Oath ; and there ordered to be entred in their Journal : And afterwards delivered at the Bar of the House of Commons.

And that the Defendant, being Speaker of the Commons, he examined that Information of *Dangerfields*, and directed the Printing of it : But it was all done in time of Parliament, and ordered to be done by the House of Commons.

By this Narrative of the Plea, all the unlucky Adjectives and untoward Adverbs are thrown off, and the Defendant cleared from the Malice.

Nor is it true that is said in Mr. Attorney's Information, To be done for the Defendants Lucre. He did it out of Obedience to the Parliament ; and he denies that he made any Profit by it, but according to the Order of the House ; the Profit of the Printing was to *Dangerfield*. And all this is confessed by the Demurrer.

The Plea consists of these Parts : Matter of Fact, Matter of Record, and Matter of Law.

It begins with Matter of Law ; and sets down the Law and Custom of Parliament.

Then he does assume the Matter of Fact, and of Record, and brings them home to that Law.

He tells us, That, *for certain*, there was such a thing as a Popish Plot, and that it was a Desperate, Horrid, Devillish Plot.

Plot. And here all the bitter Adjectives and Adverbs would have been well bestowed, rather than upon the Speaker of that Parliament; which Parliament with such admirable Zeal and Courage did prosecute some of those Plotters.

He sets forth, That——the Lord *Stafford* was in Parliament Convict before the Lords of High Treason, committed in that Plot; and he was Convicted at the Prosecution of the Commons, according to the Law, and Custom of Parliament.

He says, That the King in his Speech to the Lords and Commons, charged them to make a further strict and impartial Enquiry after this Plot.

Then the Plea tells us, They did accordingly make an impartial Enquiry, and diverse others were thereupon convicted of that Plot.

It now appears plainly, That all that is contained in this Plea was not only done during the Parliament, but by the Parliament it self; and that the Defendant only acted as Speaker.

And it is worth the remembring too, That there has been another Parliament since, namely that at *Oxford*.

And though all that was done by him in the Parliament at *Westminster*, was then very well known and remembred; and though he were so Pernicious and Seditious a Man, in the Opinion of Mr. Attorneys Information, yet the World had a better Opinion of him, for he was chosen Speaker again, in that latter Parliament, and his Majesty approved of him.

At last, the Defendant concludes his Plea to the *Jurisdiction of this Court: viz.* That what he had so acted, being acted in Parliament time, and by Order of Parliament, he demands the Judgment of this Court, Whether they will take Consuance of it.

Conclusion of
the Plea.

The Attorney General demurr'd to it.

THe Subject Matter of this Record is a very large Field, *viz.* The Power and Jurisdiction of Parliament, and yet I shall have but a narrow Path to walk in. It is a very Nice and Tender Point: It is my Case, as it was heretofore with those that were to undergo the old Saxon Trial by Fire *Ordail* (*per ferrum candens*) If I tread aside and make a wrong Step, I may do my self a Mischief.

But by the Grace of God, I shall take care neither on the one hand to give any just occasion of offence to those above me; nor yet on the other hand, shall I be wanting in that Duty I owe to the Kingdoms Cause. I shall speak my mind freely in it, and leave the Success to God.

And while I must argue for the freedom of acting in Parliament, and speak for the Speaker, and endeavour to maintain
their

their Rights and Priviledges, I may justly claim that ordinary and reasonable Priviledge for my self, that if I happen unawares to misplace a Word, or to be misapprehended in what I say, I may have the liberty instantly to explain my self.

And I take my self to be under the protection of the Law, while I argue the Law.

Three Points. In arguing this Case, I shall make three Points, or lay down these three Positions.

1. That what is done in this Case, is done in a course of Justice, and that in the highest Court of the Nation (the Parliament) and according to the Law and Custom of Parliament.

2. That however, that which is done in this Case, is not to be imputed to the Defendant, who acted in it but as the Servant or Minister of the Parliament, though in a very honourable Station.

3. That these being Matters transacted in Parliament, and by the Parliament, this Court of the *Kings Bench* ought not to take consueance of them ; nor hath it any Jurisdiction to judge or determine of them.

First Point.

As to the First, I shall frame this *Syllogism*.

No Indictment or Action lies for what is done in a course of Justice, or in a way of Legal Proceeding.

But what has been done by the Defendant, and by the House of *Commons* in this Case, hath been done in a course of Justice, and in a way of Legal Proceedings, and that in the highest Court of the Nation.

Therefore what hath been here done, is neither subject to an Action or Indictment.

First Proposition.

I shall first prove the *Major Proposition*.

That *no Indictment* or *Action* lies for what is done in a Course of Justice.

Reason.

The Reason of the Law is, That the Law and Courts of Law, and Justice, and Remedies against wrong, ought to be free and open ; and no man must be frightened nor discouraged from a Legal Prosecution of his Right.

Authority.

To prove this, I shall make bold to cite the Opinion and Authority of a *Town-Clerk*. The Report of it is in the Holy Scripture, the truest and highest Report. It was the Opinion and Advice of the *Town-Clerk* of *Athens*. We read it in the *Acts of the Apostles*, and it instantly still'd and quieted a mighty Uproar, it had so much weight in it. *If any man (says he) have any matter against another, the Law is open, and there are Deputies ; let them (says he) implead one another.*

The *Town-Clerk* of *Athens*.

The Parties to a Suit in Law, the Council, the Attorney, the Witness, the Officers, the Jury, are all under a protection of the Law for what they do or say in the prosecution of a Suit in Law, or any Legal Proceeding.

I will

I will put some few Cases suited to every one of these who are the several Actors in a Suit.

The Party
to a Suit.

By the Stat. of 3 E. 1. call'd the Stat. of W. 1. He that reports slanderous News, whereby Discord may grow between the King and his People, or the Great Men of the Realm, is to be imprisoned, till the first Author of the Tale be brought into the Court. This comes near our Case; and this is all the Punishment that the Statute inflicts upon this Crime of reporting such a Slander.

Sir E. C. in his Exposition upon this Stat. in his 2d. Inst. 228. says, That this Stat. extends only to *Extrajudicial Slanders*.

And therefore (says he) if any man bring an Appeal of Murder or Robbery against any of the Peers of the Realm, although the Charge be false, yet shall not the Peer have an Action *De Scandalis Magnatum*, neither at the Common Law, nor by this Stat. of W. 1. nor any other Stat. for any such Appeal, nor for affirming the Matter of it to be true, either to Council or Attorney, or for speaking the same in Evidence to a Jury.

It was the Lord Beauchamp's Case, 13. H. 7. *Keilway*, 26, 27, 28. Sir Richard Crofts sued a Writ of Forgery of False Deeds against the Lord Beauchamp: The Lord Beauchamp sues Sir Richard Crofts in an Action *De Scandalis Magnatum*, upon the Statute of 2 R. 2. c. 5. for this Slander, in charging him with Forgery. *Keble*, of Council for the Lord B. admits, that at the Common Law no Action did lie for this Slander, it being in a course of Legal Proceeding.

Lord Beauch.
Case.

But *Keble* was of Opinion, that this Statute of 2 R. 2. did give the Action in such a Case, though it were a Slander occasioned by a Suit.

But by *Brian* and the rest of the Court, the Action *De Scand. Magnatum*, did not lie for such a Slander, though the Matter of it were false, because it is in prosecution of a lawful Suit.

With this agrees *Boulton* and *Clapham's* Case in Justice *Jone's* Rep. 431. and *Weston's* Case, *Crok. Jac.* 432.

Sir E. C. puts the Difference in his 2d. Inst. before cited.

If a man prefer a Bill in the Star-Chamber against a great Peer, and charge him with Forgery or Perjury, no Action *De Scand. Magnat.* lies, it being in a legal Proceeding, and in a Matter wherein that Court had a Jurisdiction. A Difference.

But if in such a Bill in the Star-Chamber a Peer be accused for Felony (which that Court hath nothing to do with, nor no Jurisdiction in) this (says Sir E. C.) has not the face of a Legal Proceeding, and shall not excuse a man in an Action *De Scand. Magn.* Sir Rich. Buckley's Case. 4 Rep. 14. *Cro. Eliz.* 230. the same Case. Yet where there is but a Mistake of the Jurisdiction, if the Suit be once well commenc'd, some little Irregularities in the Proceedings shall not expose them to the Action *De Scand. Magn.* As,

D

If

If a man bring an Appeal of Murder, and through the ignorance of the Party, or his Clerk, or Attorney, it is made returnable in the *Com. Pl.* where they have no Jurisdiction in it: yet no Action *De Scand. Magn.* lies for this, the Suit being well begun, and it being in the Nature of a Lawful Suit. So says Sir E. C.

Councillor.

In the Case of a Councillor pleading for his Client.

He likewise in what he affirms or pleads for his Client, if it be pertinent to the Matter of the Suit, and he has it by instruction from his Client, he shall be protected against an Action of Slander for it. This is a Point that may concern many of us.

It was the Case of Sir *Hen. Mountagu* Recorder of London, M. 3 *Jac. Cro. fo. 90.* in B. R.

Ral. Brook brought an Action upon the Case for Slander against Sir *H. M.* for saying of the Pl. *Brook*, that he had committed Felony.

Sir *H. M.* pleaded specially to the Action, That he was a Councillor at Law, and was retained against the Pl. *Brook*, and at the Trial in giving of Evidence to the Jury, he did indeed speak those Words; but averr'd that they were pertinent to the Matter, and were part of his Instruction. It was resolv'd upon a Demurrer, That the Plea was good, the Words being pertinent, though they were false. And there is a further Reason given by the Court in that Case, viz. The Words appear not to be spoken out of Malice: And no Actions of this sort, nor will any Indictment of this Nature lie, unless there be Malice in the Defendant; and where there is any justifiable occasion of speaking words that a man in discharge of his Function or Calling is led by the Subject-Matter of Discourse, as a Preacher, or Pleader, or the like, to speak words in such Case; it shall be presumed they were not spoken out of Malice.

Attorney.

In the Case of an Attorney.

Sir E. C. in his 2d. *Instit.* in his Exposition of the Stat. of *Articuli super Chartas*, 28 E. 1. c. 10. tells us, That in the very next year after the making of that Stat. viz. 29 E. 1. *Will. de Weston* brought an Action of Conspiracy in the Kings Bench, against *William* of *Hempswell*, Parson of *Newton*, and *John* of *Malden*, Parson of *Askerby*, for causing the Plaintiff to be cited before the Arch-Deacon of *Linc.* for a Trespass, whereof he had been acquitted in the King's Court. *John* of *Malden* pleaded, That he was *Communis Advocatus pro suo dando*, and so justify'd as an Attorney; and it was found the Parson was *Communis Advocatus*, and so not guilty of the Conspiracy.

Witness.

In the Case of a Witness: For what he says as a Witness, or for what is said against him, to disable him from being a Witness, or to take off his Credit, no Action of Slander will lie.

35 H. 6. 14. In an Action of *Conspiracy*, one of the Defendants justify'd as being a *Witness*, to the Jury.

Crok. Jac. 432. In the *King's Bench*, *Weston* against *Dobneet*, in an Action for Slander. There was a Suit in the *Spiritual Court*, and the Plaintiff that brought the Action of Slander, was produced as a Witness in that Cause, and the Defendant in that Suit in the *Spiritual Court*, put in Exceptions against him, That he had been perjur'd, and therefore ought not to be used as a Witness. Thereupon, *Weston* the Witness, brought this Action for that Slander. And after Arguments, the whole Court held, that the Action of Slander did not lie for this manner of Slander, because it was in a course of Justice, and not *ex Malicia*.

In a Writ of Conspiracy. One of the Defendants pleaded, *Juror.* that he was one of the Indictors. Judgment, *si Actio*. And the Plea is allow'd. 20 H. 6, 5. & 33.

Nay though it be not in a course of Justice, in a Suit of Law, yet if a man be *in the doing of his Duty*, and in *discharge of his Function and his lawful Calling*, and in discoursing of a Subject proper for his Function, and enforcing of every mans duty of avoiding of any Sin, and in pursuit of it, tells a Story which he takes up upon trust, and does not know it to be false, and it prove at last to be utterly untrue, and an innocent person is highly slandered by it, yet he shall not be subject to an Action of Slander for it. The occasion of speaking shall clear him from the Malice, without which the Action will not lie.

In the *Book of Martyrs*, written by *Fox*, there is a Story of one *Greenwood*, who lived in *Suffolk*, that he had perjur'd himself before the Bishop of *Norwich*, in testifying against a Martyr that was burnt in *Queen Mary's* time; and says (*Fox*) this *Greenwood* afterwards, by the just judgment of God, had his Bowels rotted in him, and so he died.

This Story by *Fox* in his *Book of Martyrs*, was utterly false of Mr. *Greenwood*, and after the Printing of that *Book of Martyrs*, Mr. *Greenwood* was living in that very same Parish.

One *Priest*, a Parson, happen'd to be Presented to the Living of that Parish where this Mr. *Greenwood* then dwelt; and 27. *Eliz.* in one of his first Sermons, happen'd to inveigh against the Sin of Perjury; to which his Text did lead him; and the better to deter the People from the Sin of Perjury, he told this Story out of *Fox's Book of Martyrs*, and named the very Man Mr. *Greenwood*; and Mr. *Greenwood* himself was then in the Church, and heard this Story told of himself, but the Preacher knew it not, but thought the Story to be true. *Greenwood* brings an Action of Slander against *Priest* the Preacher; and upon the Trial of the Cause before the *Lord Chief Justice Wray*, the Case appearing to be thus, he directed the Jury to find for the Defendant, for that it appear'd it was not done out of *Malice*: And *Ch. J. Popham* affirm'd it to be good Law, it being a Matter deliver'd *after his occasion, as Matter of Story*.

This

This Case is cited by Sir E. C. in Sir Henry Mountagu's Case, before mentioned. *Crook. Jac. f. 90.*

With this agrees the Case of the Lord Cromwel, against Denny a Vicar, 4 *Rep. 13. b.* in an Action de Scand. Magn.

There is a Case in many Circumstances of it much resembling our Case.

It was the Case between *Smith* and *Crashaw*, and others *M. 20 Jac.* in the *Kings Bench*, in Sir *Jeffr. Palmer's Rep. 315.*

An Action upon the Case is there brought against the Defendants, for maliciously causing the Plaintiff to be indicted of Treason; upon which Indictment the Grand Jury found an *Ignoramus*.

To this Action the Defendants pleaded Not Guilty, and were found Guilty.

It was moved in Arrest of Judgment; That to accuse one for Treason was not Actionable, for the Safety of the King and State: For if a Man be subject to an Action for it, it will be a means that Treason shall be smothered, and Men will not expose themselves to Actions, by making such Discoveries.

J. Houghton held the Action would not lie upon an *Ignoramus* found; for by that the Party is not acquitted, but may be Indicted again and Convicted.

But he holds, That if he be Indicted, and upon Trial *Legitimo modo acquietatus*, then he shall have an Action upon the Case, in Nature of a Conspiracy; for now he is absolutely acquitted and cleared of the Accusation, and never can be Indicted again for that particular Fact.

Dodderidge agrees with *Houghton*, and puts this Case;

If an Action of Conspiracy be brought against a Man, For Indicting the Plaintiff of Treason, *The Defendant may Plead Specially* (and that is the safest way of Pleading) *That he heard the Plaintiff speak such and such Treasonable Words, and that he thereupon complained to a Justice of Peace, who committed the Plaintiff upon it, and this (says he) shall excuse him.*

Ley, Chief Justice, inclines too against the Action, and gives a strong Reason, Because (says he) it is Misprision to Conceal it; and yet if we allow of this Action, it shall be Dangerous too to discover it, so that the Defendant does *Lupum auribus tenere*.

And so the Judgment was arrested.

But we find, that soon after, when the Judges of that Court were chang'd, the same Plaintiff brought a new Action for the same Cause: And it was adjudged for the Plaintiff, That the Action would lie; but the Judges acknowledged it was the first Precedent. I suppose it was upon pleading Not Guilty. Perhaps the Court might have been of another Opinion, had the Defendant pleaded specially, and justified, according to the Opinion of Judge *Dodderidge*. The Case is *Cro. Car. 15. & Latch. 79.*

The allowing of such Actions of Conspiracy, or upon the Case; or of Indictments or Informations for what is said or done in a Course of Justice, and especially by way of Discovery of Treasons, would prove of a mischievous Consequence;

And

And would be an occasion of multiplying Actions against the Parties to the Suits, against Council, the Attorneys, the Witnesses ; and so Suits would be infinite.

As in this present Case, Should an Action be adjudg'd to lie against the Defendant for what he has acted by Authority of Parliament, what a multitude of Actions would be stirred up by it ?

If the Speaker be liable to this Information for what he has done ; by the same Reason he would be liable to the Actions of the several great Persons that are said to be defamed by the Printing of *Dangerfields* Narrative.

And if the Speaker be liable, who acted but by Command of others, and as their Minister, how much more would all those Persons be liable, by whose Command he so acted ?

And how many Narratives have there been printed, wherein several great Persons were severely reflected on, and how many Votes of the like Nature have there been Printed ?

So that there would arise a Multitude of Suits.

In Sir *Drue Druries* Case, 6. Rep. 74. The Justices in judging of that Case, give a very good Rule and Caution: They say, That Judges ought to have good Consideration in all Cases depending before them, not only of the present Cases, but also of the *Consequences*, What general Prejudice may ensue upon them either to the King or Subject.

The Case before you exceedingly requires that Consideration.

The Prejudice to the King will be, that he will not be Safe, for by this means Men will be discouraged from discovering Treasons.

The Subjects will receive Prejudice, by the multitude of Suits that will arise by it.

This may suffice to be said in maintaining the first Proposition, That no Information or Action lies for what is said or done in a Course of Justice.

The Minor Proposition is, That what is here done by the Defendant, in this Case, was done in a Course of Justice, and in a Legal Proceeding, and that in the highest Court of the Nation, (in the Court of Parliament) and done according to the Law and Custom of Parliament. This I must make out in the next Place.

The Minor Proposition.

In the making this out, I am under a Necessity of speaking of the transcendent Power of the High Court of Parliament, and I must assert these Positions following.

1. That the House of Commons was originally, and from the first Constitution of the Nation, the Representative of one of the three Estates of the Realm, and a part of the Parliament.

2. That what is done by either House, according to the Law and Usage of Parliament, is properly, and in the Judgment of

E

Law,

Law, the Act of the whole Parliament : And that what concerns the One, must of necessity concern the Whole ; not meerly by Consequence, but by an immediate Concernment, as being One, and Entire.

3. That what hath been acted in our present Case, by the Defendant, as Speaker, and by the House of Commons, whose Minister he was, and by whose Command and Order he did what he did, was done according to the Law, and Usage of Parliament.

The Commons, as now elected, have ever been a part of the Parliament.

As to the first, That the House of Commons was from the first Constitution of this Kingdom, a part of the Parliament.

There has been an Opinion, that hath been stily maintained by some Divines, and others of late,

That the House of Commons originally were no part of the Parliament, at least not as now elected, and consisting of Knights, Citizens and Burgeses ; but that their Beginning was in the forty ninth Year of King *Henry 3.* when that King had given a total overthrow at the Battle of *Evesham*, to *Symon Montford* Earl of *Leicester* and the Barons.

And that to ballance the Power of the Barons, that King caused the Knights, Citizens and Burgeses to be chosen, and to make a Part of the Parliament.

Dr. *Heylin* in the Life of Archbishop *Laud*.
Sir *Rob. Filmer*.
Dugd. in his *Orig. Juridic.*
Mr. *Pryn* in his Preface to Sir *Rob. Cotton's* Abr. (as he conjectures).

And from hence some Unquiet Innovating Writers, *quorum res, & spes ex adulatione pendent* ; and who would destroy Foundations, and remove our Ancient Land-marks, and the Ancient and Just Limits and Boundaries of Power and Authority ; Persons of necessitous Estates, or of greedy and ambitious Appetites, which drive them upon devising how to do some acceptable Service to those that maintain them : Or at the best out of unferled Judgments, and too much Zeal, which carries them to a contrary extream. These Men conclude, That therefore all the Power and Priviledge the House of Commons claims, is not by Prescription, but that they depend upon the King's Royal Will and Pleasure, and had their Original by his meer Concession, and not by Ancient Inherent Right, nor Original Constitution, and therefore may be resumed at Pleasure.

Dr. *Manwaring*.

It was one of the Articles against Dr. *Manwaring*, in the Parliament 3 *Car. 1.* for which he was Impeached by the Commons, and Sentenced by the Lords in Parliament ;

Pryn's Plea for the Lords, 353.

That to Subvert, Scandalize and Impeach the good Laws and Government of this Realm, and the Authority of the High Court of Parliament, and to avert his Majesties Mind from calling of Parliaments, and to alienate his Royal Heart from his People, he did in his Sermons, and in his Books printed, endeavour to persuade the King,

That his Majesty was not bound to observe the Laws of the Realm concerning the Rights and Liberties of the Subjects :

That Authority of Parliament was not necessary for raising of Aids and Subsidies.

His

His Sentence was Imprisonment during pleasure, and but 1000*l.* Fine for this high Offence, not 20000*l.* as hath been of late times.

He was to acknowledge his Offences, as it should be set down by a Committee in writing at the Bars of both Houses.

He was suspended from his Ministry.

Disabled to preach at Court.

His Books were to be call'd in, and burnt in *London* and both the Universities.

Power limited by Law is safest.

It may be thought *Potestas minor, sed tutior & diuturnior.*

Ea demum tuta est Potentia, quæ viribus suis modum imponit.

To encounter these new and upstart Opinions, I shall mention an Author or two, whom all sober men reverence, that are of a contrary Judgment to these new Authors. And they are either Eminent Lawyers, or Divines.

And I am the more encourag'd to do it, because His Majesty that now is, hath upon several occasions been pleas'd graciously to declare, That he holds Parliaments to be the best Method for healing the Distempers of the Kingdom, and the only means to preserve the Monarchy in credit at home and abroad; and he promises to rule the People by the Law.

King Charles
the Second.

Hales, that solid learned *Divine*, in his *Golden Remains*, cites *Baldus* for it: *Digna Vox est Majestate Regnantis, Legibus alligatum Principem se profiteri.*

And Learned *Hooker*, that great Champion for the Discipline, and for the Rites and Ceremonies of the Church, in his *Eccles. Polity*, delivers his Opinion quite contrary to these Time-Servers.

Pag. 27. All publick Government (says he) of what kind soever, seemeth evidently to have arisen from deliberate Advice, Consultation and Composition between men. That Composition signifies the Laws. And, *pag. 28.* he says further, That the Power of making Laws to command whole Politick Societies of men, belongs properly to the same entire Societies.

What can be said more in confutation of the Book that goes by the Name of *Sir Rob. Filmer*?

The Duke of *Wittemberg*, at the Council held at *Wormes*, when other Princes discours'd of many Priviledges and Conveniencies of their Lordships and Territories, openly protested it to be his greatest Felicity,

That he could *in aperto Campo, & in Sinu Subditorum suorum dormire.*

Non eget Mauri jaculis, nec arcu, &c.

I shall further add only the Judgment of one or two of our most Famous and Learned Judges concerning this Matter.

Fortescue

Fortescu, that was first *Lord Chief Justice*, and afterwards *Lord Chancellor* in the Reign of *H. 6.* in his excellent Book in commendation of the Laws of *England*, affirms this Doctrine.

Fol. 32.

Ad tutelam Legis, Subditorum, ac eorum Corporum & Bonorum erectus Rex est. Et ad hanc Potestatem a Populo effluxam ipse habet.

Sir *E. C.* in his 12. *Rep.* 64. delivered his Opinion freely in the Case of Prohibitions, before the King and the Lords of the Council; where there was a warm Debate between the Judges and Dr. *Bancroft*, Archbishop of *Canterbury*. And what Sir *E. C.* deliver'd for Law, was with the clear consent of all the Justices of *England* and Barons of the Exchequer.

And there Sir *E. C.* says, it was greatly marvell'd at, that the Arch-Bishop durst inform the King, That *the King had an absolute Power and Authority by the Word of God to determine what Causes he pleas'd in his own Person.*

And it is admirable to observe with what a true and honest Courage that grave Chief Justice Sir *E. C.* answer'd the King himself in that Debate. When the King was pleas'd to say, It was Treason to affirm, that the King was under the Law: The Chief Justice answer'd him with the Words of an ancient Judge, and Author of our Law (that is, out of *Bracton*) That the King was *sub Deo & Lege*. And *Fleta*, another of our ancient Authors in our Science, useth Words to the same effect. This Doctrine differs from some of our late *Motto's* in the Serjeants Rings.

Tacitus, in his Annals, gives this excellent Commendation of two of the best of the *Roman* Emperors, *Nerva* and *Trajan*: *Res olim insociabiles miscuerunt, Imperium & Libertatem.*

And that Author well observes it as the true Case and Condition of a People, and a necessary Consequence; *Amisssa Virtute pariter ac Libertate.*

This Discourse of mine may seem to some to be a Digression; but a man can never have a juster occasion for it than now, and upon this Argument and Suit: I make that my Apology, which I learn from King *James*, (His Majesties Royal Grandfather) in his Discourse of the *Powder-Treason*: Which proves it the more seasonable.

Fol. 223. of
his Works.

There is a Time (saith King *James*) when no man ought to keep silence. It hath (says he) been ever held as a general Rule in all well-govern'd Common-wealths, whether Christian, or Ethnicks, That when either their Religion, or their King, or their Countrey was in any extream hazard, no good Countrey-man ought then to withhold either his Tongue or his Hand according to his Calling or Faculty, from aiding to repel the Injury, repress the Violence, and avenge the Guilt upon the Authors.

To

To support the Power and Priviledge of the House of Commons, as being an essential part of the Parliament; it is absolutely necessary to make it out against these Innovators, that the House of Commons have ever been a part of the Parliament, and that they were long before 49 H. 3.

The Commons as now constituted, began before 49 H. 3.

Or otherwise they are but precarious in their power and priviledges, and enjoy them but of Grace.

Every Priviledge is by Prescription, says the Lord *Dier*, fol. 60. a. med. in *Trewinnard's Case*, which I shall have occasion to mention more at large before I have done.

And in the same *Dier*, fol. 70. in the Case of *Withers and Iseham*, it is held, That a man cannot prescribe to an Incident or Appendant, nor indeed to any Power or Authority where the Principal Thing hath not had a perpetual continuance.

Therefore where the beginning of a thing is known, there can be nothing belonging to it by Prescription.

In one of our late Kings Reigns, the House of Commons in an Address of theirs, made mention of their Priviledges, as their ancient and undoubted Right and Inheritance: But Offence was taken at it, and they were told, it had been better if they had said their Priviledges were deriv'd from the Grace and Permission of the King and his Ancestors.

Rushw. Hist. Collec. Part 1, fol. 52.

Now I shall clearly prove that these Powers and Priviledges were indeed their ancient Right and Inheritance. Which they cannot be unless that House, or the Commons by their Representative, have been ever from the beginning of the Government a part and member of the Parliament.

I shall prove it out of several authentick Authors of the Law, Historians and Antiquaries, and by a multitude of Records, and by divers Acts of Parliament, which are all the sorts of Proof that can be in a Question of this Nature.

Proof that the House of Commons have ever been a part of the Parl.

The *Mirroure of the Justices*, of which Book Sir E. C. says, That most of it was written before the Conquest (as appears by the Book it self) *Tho. Horn*, a Learned man, added much to it in the Reign of E. 1. in this *Mirroure of the Justices*, c. 1. sect. 3. It is said that King *Alfred* Ordain'd for a perpetual Usage, That twice in the Year or oftner, if need be, the Parliament should assemble. And to let you see of whom that Parliament did consist, he tells us in the same Chapter by whom the Laws were then made. It is (says he) among other things, ordain'd, that no King should change his Money, nor impair it, nor inhanse it, nor make any Money but of Silver, without the assent of the Lords and All the Commons.

In his Pref. to his 10th. Rep.

Sir E. C. in his Preface to the *9th. Rep.* tells us, That Tenants in Ancient Demesne, because by their Tenure they were bound to Plow and Husband the Kings Demesnes, before the Conquest: And in the Conquerors Time, had divers Priviledges, which they claimed by Prescription; and among others, *Not to contribute to the Wages of the Knights of the Shire.*

Now the Priviledge must be as Ancient as their Tenure and Service, for their Priviledge comes by reason of their Service, and their Service is known by all to be before the Conquest, in the time of *Edward the Confessor*, and in the time of the Conquerour. And it is expressly said by this Learned and Reverend Judge, That these Tenants, in Ancient Demesne, claimed this by Prescription; and it could not be so, if the Wages of the Knights of the Shire had begun within Memory of Man, or of any Record. Therefore it clearly follows, That Knights of the Shire to serve in Parliament, and the paying Wages to them for their Service, has been Time out of Mind, and did not begin 49 *H. 3.* for that is within Time of Memory in a Legal Sence.

The same Argument is used by a Learned Lawyer and Antiquary Mr. *Lambard*, in his *Archion*, or Commentary upon the Courts of Justice, fol. 57, and 239, and 245. where he maintains that the Parliament was used in the *Saxons* time, and then consisted of the King, Lords and Commons, as in the time of King *Ina. Anno 712.*

He does affirm, That Burgeses were chosen to the Parliament before the Conquest, fol. 257, 258, 265.

Littleton's Tenures, sect. 164. says, That the ancient Towns call'd Burroughs, be the most ancient Towns that are in *Engl.* for the Towns that now are Cities or Counties, in old time were Burroughs, and call'd Burroughs, for that of such old Towns came the Burgeses to the Parliament.

Sir E. C. in his Comment upon this Text of *Littl. 1 Inst. 110.* says, it is called *Parliamentum*, because every Member of that Court should *Parler la Ment.*

Many Pretenders to Learning, take upon them to censure Sir E. C. for this and some other like Etymologies, as being ridiculous.

Let me do right to that Learned in the Law, and (which is more) honest and worthy Chief Justice, who lives in his useful Works, and in (that great Blessing from God) a numerous and flourishing Posterity.

It is true, *Mentum* is an ordinary Termination of divers words of the Neuter Gender, and so it is (if we will be strict) in the Word *Parliamentum*.

But give me leave to say, if it be ridiculous, he is not the first nor the greatest that hath been guilty in this kind; nor is it any proof of Illiterateness, nor to be charg'd only upon the Profession of the Common Law, as if it were an Absurdity peculiar to us.

For

For the Antiquity of the like Etymology, it is of above a thousand years standing ; and for the Authority of it, it is to be met with in the Imperial Laws of *Justinian* the *Roman* Emperor, and the last of the *Roman* Emperors.

Even in the very Text of the Civil Law, it makes the Etymology of *Testamentum* ; *Ex eo appellatur* (says the Text) *quod Testatio mentis est.*

Allusione quadam Etymologica ostendit rei & vocis convenientiam, (says *Vinius.*) in his Comment. fol. 270.

Nomen ab officio convenienter habet.

And *Vinius* says further, *Estque hujusmodi allusiva derivandi ratio, omnibus Auctoribus admodum familiaris. In jocis Venustas delectat ; qualis est illa Ciceronis, Fides, quia fiat quod dictum est.*

And Sir E. C. (it may be) was prompted to this *Etymon* from that ancient Author, the *Mirraur of Just.* who, in the place I before cited, c. 1. sect. 3. though he did not expressly mention the Word (*Parliament*) yet speaking of it under another Name , he tells us what their Property is, viz. *A Parler la Ment.*

Thus much by way of Digression, for the Vindication of that Honour of our Profession, Sir E. C. to whom not only his own, but all Posterity are highly oblig'd, especially our Profession.

The *Register of Writs*, fol. 261. *Quod homines de antiquo Dominico non contribuant expensis Militum ad Parliamentum venientium.* This is the Title of the Writ.

The Writ it self runs thus, viz.

Monstraverunt Nobis (says the King) *Homines & Tenentes de Manerio de S. quod enim de antiquo Dominico Corona Anglia, ut dicitur, quod licet ipsi & eorum Antecessores Tenentes de eodem Manerio a tempore quo non extat Memoria, semper hactenus quieti esse consueverunt de expensis Militum ad Parliamenta Nostra, vel Progenitorum Nostrorum Regum Anglia, pro Communitate dicti Comitatus, venientium, &c.*

M. 11. H. 4. *Fitzh.* Avowry, *Placito*, 52. (which is said to be the first Case in our Year-Books , concerning Wages to Knights of the Shire) In a Replevin the Defendant avows as Under-Sheriff, by vertue of a *Fieri facias*, to levy the Wages of the Knights of the Shire ; and he took his Distress in a Town call'd *Wotton. Tremain*, for the Plaintiff, pleads in Bar to the Avowry, That *W. temps d'ont* , &c. never paid to the wages of the Knights of the Shire ; and so Issue is joyn'd upon that Prescription.

M. 14. H. 8. fol. 3. in the Year-Book, by *Fineux* Ch. J. The Parliament (says he) consists of the King, the Lords and the Commons , and they are by the Com. Law One Body Corporate.

Now,

Now, that, they cannot be at the Common Law, but by *Prescription*,

Proof by Records of Parliament.

I shall now proceed to prove it by several Records of Parliament, that the Commons have ever been a part of the Parliament, as constituted at this day, of Knights, Citizens and Burgeses.

5¹ E. 3.

Ex Rotulo Parliamenti, anno 51. E. 3. Membr. 5. num. 45. Mr. Pryn's 4th. part of a Register of Parliamentary Writs, fol. 315. in Sir Rob. Cott. Abr. it is too short ; but at large in Mr. Pryn, as before cited.

There is a Petition of the Commons to the King in *French*.

Item, For that of *Common Right* (which is the same with the *Common Law*, in the Language of the Acts of Parliament) of the Realm. Of every County of *England* there were and are chosen two Persons to be at the Parliament, for the Commons of the Counties, besides the Prelates, Dukes, Earls and Barons, and such as hold by Barony ; and besides Cities and Burroughs, who ought to chuse of themselves such as are to answer for them. And such as are chosen for the Counties ought to have their *accustomed Wages*, and to have Writs to the Sheriffs to levy them.

They pray that it be ordain'd this present Parliament, that the Wages be Levied of all the Commons of the Counties, as well within Franchises as without (excepting within Cities and Burroughs, and excepting of those that are summon'd by Writ (meaning the Barons) and their Tenants.

Resp. *Soit fait come devant ad este use en cest Case.*

This was in the time of K. E. 3. who was but the Fourth King in Succession from that K. H. 3. in whose Reign our new Authors would have our Knights, Citizens and Burgeses to have their Original.

And the Kings Answer to the Petition of the Commons, admits the matter of the Petition to be true, and refers to Usage in former times.

5 H. 4. nu. 71.

In the same Fourth Part of Mr. Pryn's Register, fol. 643. 5 H. 4. Rot. Parl. num. 71, & 78.

On the behalf of Rich. Chedder Esq; Menial Servant to Tho. Brook, Knight for *Somersetshire*.

The Commons Petition'd, That whereas, *After the Custom of the Realm, all the Lords, Knights, Citizens and Burgeses*, with their Servants coming to Parliament, by the Kings Writ, in coming, going and returning, are under your Royal Protection, &c. And this Petition was answer'd by the Act in Print.

We may note from hence, That their Priviledge, and therefore much more their being a Part of the High Court of Parliament, it was by *Custom of the Realm*.

I would

I would note further (since I shall have occasion to use it for another very material Point) that this Custom (though the then present occasion for the mention of it, was from the Servant of a Member of the Commons House ; yet it is (alleg'd as one *entire Custom* for the whole Parliament, *viz. all the Lords Knights, Citizens and Burgeses*. They are all but *One Body, One Court* ; and their Rights and Priviledges are entire, and not some for the Lords, and other for the Commons ; but it is a joint Priviledge.

From hence it follows, you cannot invade the Privilege of the one House, but you invade both.

Elsing, in his Treatise of Parliaments, *fol. 145*. 'Tis also in *Sir Rob. Cott. Abr. fol. 433*. but not so full.

In the time of the same King, *5 H. 4. num. 74*.

The Commons pray, That whereas according to the *Custom of the Realm*, the Lords, Knights, Citizens and Burgeses, coming to Parliament, ought not for any Debate, &c. to be arrested. *5 H. 4. na. 74.*

It is said to be the Custom of the whole Realm (that is, the same with the Common Law) and it is made to be *one entire Custom*, both for the Lords and Commons ; and this is for freedom of Debates, and not the same with the last that I cited, though in the same year.

39 H. 6. Rot. Parl. num. 9. On the behalf of *W^r Clerk Burg* *Mr. Pryn, ut supra, fo. 771.*
of *Chippenham* in *Wiltsh.*

And *17 E. 4. Rot. Parl. num. 36*. On the behalf of *J. at Will.*
Cit. for Exeter.

In both these Cases (though upon occasion of two particular Members) yet the *whole House* of Commons petition'd.

And the Petition on the behalf of *W^r Clerk*, runs thus ;

That, *whereof time that mans mind is not to the contrary, it hath been used*, &c. and then sets forth their Priviledge.

The Petition of the Commons on the behalf of *J. at Will.* is in these words, *viz. The Freedom of which Commons* hath ever afore this time been, and *oweth to be*, that the Knights of the Shire, Citizens of the Cities, and Barons of the Cinque-Ports, call'd to any of the Parliaments of your Noble Progenitors (*among other Liberties and Franchises*) have *had and used Priviledge*, that any of them should not be attached by their Persons or Goods in their coming to any such Parliament, their abiding, nor returning to their proper homes, &c.

Their Freedom had *ever* been ; then it did not begin first, nor had they themselves their beginning in *49 H. 3*.

And *oweth to be* : Then it was not of meer Grace, and by Permission, but of *Right* it *ought so to be*.

And *Two Acts of Parliament* pass'd upon those two Petitions, which confirm the truth of those Suggestions.

And another thing I would observe, which does naturally and easily flow from these Records, and is very useful to us, *viz.*

That the Commons *Petitioning* to have these Freedoms allow'd them, does nothing derogate from their Right to those Liberties

and Franchises, nor is no Argument to prove them to be meer Emanations of Royal Favour ; for the humble way of Address, by the Commons to the King to have their Rights maintained, is made use of by our Novellists, to prove they were granted from time to time, meerly by the Kings Grace.

Addreses to
the King
ought to be
with Reve-
rence.

I am far from condemning this humble way of Subjects addressing to their Sovereign : It becomes the Duty of Subjects, and is due to the Majesty of a King, to have all decent Reverence shewn : But I would not have ill use made of their Humility, to deprive them of their Rights. It was (as I take it) the observation of *Cæsar*, in his Commentary, of the Temper of the old *Britains*, *Jam domiti ut pareant, non ut serviant.*

31 H. 6.
Thorp's Case.

In that famous Case of *Thomas Thorp*, the Speaker of the Commons, 31 *Hen. 6. num. 25.* there are the very Words of the Petition, at large set forth, in the fourth Reg. of *Mr. Pryn*, fol. 644.

Thorp, was taken in Execution, at the Suit of the D. of *Y.*

The whole House of Commons petitioned to have their Speaker restored to them : And their Petition is in these Words.

By Common Custom, Time out of Memory of Man, and ever afore these Times used, in every of the Parliaments of the Kings Noble Progenitors, &c.

And so it proceeds to declare the Priviledge of the Commons.

I would observe also, out of these three last Records of Parliament ; That when any Breach of Priviledge befell but a single Member of that House, as that of *Walter Clerk*, and *J. at Will.*

The whole House thought it self concerned, and the whole House petitioned ; especially in this last Case of *Thomas Thorp*, their Speaker, to whom the D. of *Y.* was no Friend. This will be useful to my Second Point.

Hitherto I have presented you with Records of Parliament, as being the most proper Proof of the Rights of Parliament, much beyond the Reports of our Historians, from whom our Innovators fetch most of their Arguments.

Exchequer Re-
cords.

I shall now offer you some Records out of an inferior Court, one of the four Courts of *Westminster-hall*, that is, out of the *Exchequer* : But they are *Judicial Records*, adjudged by the whole Court, by Advice, with all the Judges of both Benches, to confirm the same Point.

M. 12. E. 4. and H. 13. E. 4. in the Office of the Pleas in the *Exchequer*, mentioned by *Mr. Pryn*, in his fourth part of his Register of Parliament Writs, fol. 752.

In a Plea of Debt by *Donne* against *Walsh*.

Walsh was menial Servant to *Henry Earl of Essex*, and he sued out his Writ of Priviledg, and the Writ under the Great Seal, was of this Tenure : viz.

Cum secundum consuetudinem in regno hætenus obtentam & approbatam, Domini Magnates Milites Comitatum ac Cives & Burgenses Civitatum & Burgorum, ad Parliamenta nostra venientes, ac
eorum

eorum Familiares ratione alicujus Transgressionis (and so proceeds to enumerate other sorts of Actions) *dum sic in Parliamentis nostris morentur, arrestari aut implacitari minime debeant, &c.*

And then the Writ mentions that Action of Debt, brought against *Walsh*, menial Servant to the Earl of *Essex*, in that present Parliament, *Vobis mandamus* (says the King by that Writ of Priviledge to the Barons of the *Exchequer*,) *quod si ita est*. Those Words do not refer to the Custom set forth, nor to the Law upon it, but to the Allegation in the Writ of matter of Fact; *viz.* That *Walsh* the Defendant was menial Servant to the Earl of *Essex*.

And then the Defendant does by way of Plea, grounded upon that Writ, apply the Writ to himself; and avers, That he is the same Person mentioned in the Writ; and avers, That he was the menial Servant to the E. of *Essex*, and then demands allowance of his Priviledge.

The Plaintiff in that Suit traverses the Custom and Priviledge alledged in the Writ (as to the being impleaded) but admits it as to the Freedom from Arrest. This Traverse is in the Nature of a Demurrer; for it is *Questio Juris, ad quam respondent Judices non Juratores*.

Et super hoc viso & prælecto brevi prædicto, per Barones, &c. Habitoque Avisamento Justiciariorum Domini Regis, de utroque Banco in hac parte. Quia videtur præfatis Baronibus de avisamento Justiciariorum prædictorum, quod talis habetur & habebatur consuetudo, quod Magnates & Milites Comitatum, ac Cives & Burgenses Civitatum & Burgorum ad Parliamentum de Sumonitione Regis venientes, ac eorum Familiares Ratione alicujus Transgressionis, &c. dum sic in Parlamento morentur, capi aut arrestari non debent. (But then they adjudge that the Priviledge does hold only against Arresting their Persons, but not against the Suing them.)

This strongly proves the Point I have in Hand, That the House of Commons have their Priviledges by Custom, and therefore the House it self could not have its Original within Time of Memory, as 49 H. 3. is, in a Legal Understanding.

It is very useful further to observe, That the single and sole Occasion of this Record was from the Priviledge of the Peers, from the suing a menial Servant of a Peer. No Man denies but the Peers have ever been a part of the Parliament: Nay, our new Modellers of the Government would have the Parliament to consist only of the King and Lords.

And yet it is said to be a *Joint Custom* for the Commons, as well as for the Lords, by expresse and particular Words. Why did they not lay the Custom for the Priviledge of the Lords only, that might have serv'd for that present Occasion, which was about the Priviledge for a menial Servant of the then E. of *Essex*?

But the Custom was an entire Custom for both Houses: This proves them to be coætaneous, and Twins by Birth and Original.

All this is by the Judgment of all the twelve Judges, in a Judicial Proceeding: And it takes in the Opinion of the Chancellor, who issued out that Writ.

The

H. 12. E. 4.
in the Exche-
quer.

The other Record of the same Court is entred H. 12. E. 4. Rot. 7. inter Ryner & Cousin, Keeper of the Wardrobe to the King, in an Action of Debt too; and there the Defendant claims his Priviledge, not as Servant to the King, but as Servant to Thomas St. Leger, Knight of the Shire for Surrey.

And the Writ of Priviledge sets forth the same entire Custom, both for Lords and Commons (tho' the Occasion was here from the Commons only) and the Court of Exchequer gives the like Judgment, as in the former Case, by Advice too, of all the Judges of both Benches.

E. 2. S. Albans.

The next Record I shall make use of, shall be that of E. 2. which is a most invincible Proof that the Knights, Citizens and Burgeses have originally, and before 49 H. 3. constituted the House of Commons, and have ever been a part of the Parliament.

The Burgeses of S. Albans, in their Petition to the King, say, That they sicut ceteri Burgenses Regni ad Parliamentum Regis, per duos Comburgenses suos venire debeant, prout retro-actis temporibus venire consueverant, tam tempore Domini Edwardi, nuper Regis Angliæ, Patris Regis (which must be E. 1.) & progenitorum suorum (which must be understood of the Progenitors in the plural number of E. 1. for he mentions the then King E. 2. afterwards) so that of necessity it must take in King Hen. 3. and his Father King John, at the least.

And this Computation much exceeds the Date given to the House of Commons by these new Authors, viz. 49 H. 3.

And then the Petition descends to the mention of the then Kings Time; viz. E. 2. tempore Domini Regis qui nunc est, semper ante instans Parliamentum. And the Petition complains of the Sheriff of Hertfordshire, who by the Abbots procuring, refused to summon that Burrough.

The Answer by the Council is, Scrutentur Rotuli, &c. de Cancellaria, si temporibus Progenitorum Regis Burgenses predicti solebant venire, vel non.

This Answer admits the general Usage of Burgeses to be chosen for divers Burroughs, in the times of the King's Progenitors; For it is absurd to think, that that needed any search of the Rolls in Chancery, but the Search was to be only, Whether that particular Burrough of S. Albans was one of those Ancient Burroughs that had used that Priviledge, and had a Right to it, which would appear by the Rolls, and Returns of Writs of Summons.

The Record lays the Usage for the Burrough to have been semper, ante instans Parliamentum; so that the Usage had been from ever.

11 H. 4. n. 59.

In the Rolls of Parliament 11 H. 4. num. 59, cited by Mr. Pryn, in his Brevia Parliamentaria rediviva, fol. 185. There is a Petition of the Commons in French, reciting the Stat. of 7. H. 4. c. 15. which Statute (as the Petition says) was made for the preserving the Franchises and Liberties of the Election of Knights of the Shire, used throughout the whole Realm, and by the Kings Progenitors from Parliament to Parliament, time out of mind observed.

I will

I will now put the Court in mind of some Acts of Parliament, that fully prove this Point.

The Statute of 5 R. 2. Parl. 2. c. 4. (in a time When Parliaments were not so much valued) *It is thereby Enacted, by Assent of the Prelates, Lords, and Commons, that all Persons and Commu-* Proof by Acts of Parliament. 5 R. 2. Parl. 2. c. 4. *nalties, which should have a Summons to Parliament, should come from thence-forth to Parliaments in the manner as they were bounden to do, and had been accustomed of Old Times; otherwise they should be Amerced as of Old Times had been accustomed.*

Rot. Parl. 2 H. 5. Pars 2. Numb. 10. This is left out of Sir Rob. 2 H. 5. pars 2da. Numb. 10. *Cott. Abr.* That Act declares, that the Commons had ever been a Member of the Parliament, and that no Statute or Law could be made without their Assent. I will not spend time in citing those Learned Antiquaries, or Historians; as Sir Henry Spelman, *Bedes* Historians and Antiquaries. *Eccl. Hist.* nor Famous Selden, nor Learned Cambden, who by general Words, used in the Saxon Times, for the Assembling of Parliaments, tho' not by that Name, prove the Commons to be a Part of Them; but they do not prove the Commons to be so Elected, and to consist of Knights, Citizens, and Burgeses, as is clearly Proved by the Records I have already offer'd.

The Parliament in the Saxon Times was styled *Commune Concilium*, Et Populi Contam Cleri quam populi. And the Laws were made *per Commune Concilium*, Et assensum Omnium Episcoporum & Principum Procerum Comitum, & omnium sapientum Seniorum & populum totius Regni & Populi Conventus. King Edward the Confessor Confirm'd the Saxon Laws, and made new, says Lambert in his Book *De Priscis Anglor. Legibus* C. 8. fol. 139. and there 'tis said, all to be done *a Rege, Baronibus & Populo*. These general Words cannot be understood otherwise, than to include the Commons.

And so *totius Regni assensu & omnium astipulatione & judicio*, says Seld. Tit. of Hon. pag. 702. in a Case between the Arch-Bishop of York, and the Bishop of Worc. Mr. Selden, a Judgment was given concerning Lanfrank, Arch-Bishop of Canterbury. The Statute of *Mag. Charta* was made and Confirm'd 9 H. 3. which was forty Years before this new Date of the Original of the House of Commons, viz. 49 H. 3. And it appears by several Statutes, that *Mag. Charta* was made *De Communi Concilio Regni* says one Statute: *Per Commune assent de tut le Realm*, says another. *Per le Roy, Peers, & Communes de le terre*, says another. Mag. Char. 9 H. 3.

It is worth the while to examin the Grounds of their Opinion, and it will appear how weak they are.

These new Authors affirm, that the House of Commons began to be admitted as a part of the Parliament, not till 49 H. 3. Their reason is because (as Mr. Prin says, in his Plea for the Lords fol. 182. and in his Preface to Sir Robert Cott. Abr.) *The first Writ of Summons* of any Knights, Citizens and Burgeses now extant is no antienter than 49 H. 3. Dorso 10; and 11. And from thence he concludes, that it is most apparent, that the Commons had no Place, nor Votes by Election in Parliament, before the End of the Reign of H. 3. and Sir Robert Filmer is in like manner positive in it in his Book call'd *The Freeholders Grand Enquest*, fol. 18. Object. 1.

and they both cite *Mr. Seld.* and *Camd.* and other Learned Authors, and *Mr. Dugdale* in his *Origines Juridiciales*, fol. 18. follows them in it. It is true *Mr. Selden* in His *Titles of Honour*, fol. 717. towards the end of that fol. does take notice that the *First Roll* that they find extant is that of 49 *H. 3.* for the Summoning of the Commons by way of Election; but he does not thence conclude, (as those new Authors do) that this was the first time that the Commons came to the Parliament by Election.

But in other places of his Learned Book, he does strongly intimate his Opinion to be that the Commons did very Anciently and long before 49 *H. 3.* make an Essential part of the Parliament, and were summon'd to it; but in what Form they were summon'd, and when they first began to be distinguished from the *Barones Majores*, *Selden* himself seems much unresolved.

Learned Camden does indeed date the Original of the Commons as a part of the Parliament, and as now Elected, from 49 *H. 3.* fol. 13. of his *Britannia in the Edit. at Lond. An. 1600.* But let us take notice upon what Authority he does it. He says he has it *Ex satis Antiquo Scriptore*, but he names not his Author.

Mr. Seld. fol. 713. says, he could never meet with that Author, and professes he gives little Credit to that Relation, but acknowledges there had been a great Change in the Constitution of the Parliament, but supposes it long before 49 *H. 3.* viz. in the time of that King's Father (King *John*) and that it was done by a Law, tho' the Law be lost, as many Rolls of Parliament were, wherein those Laws were entered.

Fol. 709.

And the distinction of *Barones Majores & Minores* he supposes was made by Act of Parliament, about the time when the great Charter of King *John* was made at *Runnymede* viz. 17 *Johannis*. By which Charter, some of the *Barones Majores* were severally to be Summon'd to Parliament by special Writs. And all other Tenants *in capite*, or Tenants by Knights Service were to be summon'd by a general Summons directed to the Sheriff of every County.

By this Conjecture, it should seem that the Court of Parliament before consisted but of one House or Assembly. And it is generally held, that at the first, from the beginning of the Reign of *William* the first, till that Charter of King *John*, all Tenants *in Capite* had a Right to sit in Parliament. For says *Mr. Seld.* fol. 704. medio folii. *Tenere de Rege in Capite*, and to be a Baron, and to have a right to sit in Councils or Courts of Judgment, are Synonymies. That great Charter of King *John*, says *Seld.* was made by the King and his Barons, & *liberos homines totius Regni*, and that it seems first made the distinction.

But

But Mr. Seld. does by no means leave it to K. H. 3. or his Son E. 1. or to any other King at any time, to send his special Writ of Summons to such of the Barons only, *quibus ipse Rex dignatus est Brevia Summonitionis dirigere*. As Mr. Camden's nameless Authour taught him, and from Mr. Camden, Mr. Pryn, Sir Robert Filmer, and Mr. Dugdale take it up, and so propagate that Error. So that this new fancy is wholly grounded upon the Credit of that uncertain Writer, whom Mr. Selden could never meet with, and to whom he gave no credit.

The Argument upon this Subject, begins fol. 701. in Mr. Seld. *Tit. of Honour*, and is continued to fol. 718.

Now the Argument taken from the Rolls of Summons, which are not extant before the time of 49 H. 3. is of no weight.

For by the same Argument it might be proved, that there was no Parliament from the time of 49 H. 3. till 23 E. 1. For there is no Roll nor no other Testimony left of a Summons for any Knights, Citizens and Burgeses, from 49 H. 3. till 23 E. 1. And yet we know there were no less than fourteen Parliaments between those times.

They may as well argue, that there were no Acts of Parliament, nor no Parliament till 9 H. 3. when *Magna Charta* was made, because there are no Rolls of them till that time. Whereas it is beyond all dispute, that there were Parliaments and Acts of Parliament long before, as 4 Will. 1. when the Bishops were brought in to hold by Barony, (as Mr. Seld. conceives) and some in H. 1. and others yet extant in History, yet the Rolls of them are lost. This is observ'd by the *Ld. Ch. J. Vaughan*, in his *Rep. fol. 358.* in the Case of *Thomas and Sorrel*.

The Ancientest Writ of Summons, that Mr. Selden had seen for a Peer, was but 6 *Johannis. Tit. of Hon. 707, 708.*

In the next place, these late Authors proceed further in their error, and maintain that the Commons had no further power in Parliament, than what the King and the Lords admitted them unto.

Mr. Pryn's Plea for the Lords, fol. 113. but mis-paged.

And Sir Robert Filmer, fol. 40. allows neither Lords nor Commons any Power but by the King's bare Permission, and thus they are growing in their Invasions against the Court of Parliament, and impeach one first, and the other will follow more easily.

And Sir Robert Filmer further holds, the Legislative Power rests solely in the King, and fol. 39. he hath these words, *But the truth is (saith he) The Liberties and Priviledges of both Houses, have but one and the self-same Foundation, which is nothing else but the meer and sole Grace of Kings.*

And Doctor Heylin, in his *Life of Arch-Bishop Laud*, fol. 91. denies the Priviledges of Parliament to be the Peoples Birth-Right, but holds them not otherwise exercis'd, than by the Grace and Goodness of the King.

Mr. Pryn, Sir Robert Filmer, and Mr. Dugdale, lay great stress 2. object. upon the diversity that is in the Writs of Summons, between the Summons for the Lords, and the Summons for the Commons.

That to the Lords (*say they*) is *super negotiis prædictis tractaturi vestrumque consilium impensuri*. But that to the Commons, is (*say they*) only *ad faciendum & consentiendum his quæ tunc ibidem de communi consilio dicti regni contigerint ordinari*.

It is true, that for many years of late, that distinction hath been so used in the Summons, but not constantly so.

As to this point, I will cite Mr. Dugdale's, and Mr. Prin's own Books against their own Opinion.

49 H. 3. The very first writ of Summons, which as they say is now extant, for the Summmoning of the Commons by Election, viz. 49 H. 3. runs in these words, *Nobiscum ac cum prædictis prælatis & magnatibus nostris super præmissis tractaturi atque consilium impensuri*. Dugd. Orig. Jur. pag. 18.

28 E. 1. The Writ, *De expensis Militum qui venerunt ad Parliamentum venientibus* (saies that Writ) *usque ad Westmonasterium ibidem de diversis negociis nobiscum tractaturis*. See Mr. Pryn's 4th. part of a Register of Parliament Writs, fol. 8.

35 E. 1. In Mr. Ryley's *Placita Parliamentaria*, it appears, that as the Summons to the Temporal Lords, fol. 318. was *ad tractandum*, and so likewise the Summons to the Prelates, fol. 319. so also fol. 320. it is entred in these words, *Mandatum fuit singulis Vicecomitibus per Angliam quod de quolibet comitatu duos milites, & de qualibet ciuitate duos cives, & de quolibet burgo duos Burgenses eligi & ad dictum Parliamentum venire facerent ad tractandum, &c.*

15 E. 2. In the same Book, fol. 570. An. 15 E. 2. there is mention of a Writ of Summons, for Knights out of Wales, to a Parliament at York, *ad tractandum & consilium impendendum*.

31 E. 3. In Mr. Pryn's *Brevia Parliamentaria Rediviva*, fol. 274. there is the very Indenture return'd by the Sheriff of Norfolk for great Tarmouth, *ad tractandum, consulendum & consentiendum*.

18 E. 2. And fol. 68. of that Book, another Writ, *de expensis militum*, reciting the Cause for which they had been Summon'd to the Parliament, viz. *ad tractandum, &c.*

18 E. 3. And in the same Book, fol. 145. it appears that 18 E. 3. the Writs to the Sheriffs for chusing Knights, mention'd what their work was to be, in these words, viz. *Nobiscum, cum prælatis & proceribus prædictis super diversis & arduis negotiis nos & statum regni nostri specialiter tangentibus tractaturi & suum consilium impensuri*.

26 E. 3. And fol. 147. and 149. the like words in the Writs.

1 H. 5. And fol. 177. the Indenture return'd by the Sheriff of Wiltshire, recites their trust in the same words, and pursues the words of the Writ.

And

And 276. and 283. and 381. Indentures return'd from *Reading, Bristol, London*, with the same words. And *ib. fol. 178* and 179 and 291 for *Windsor*, and 365. So that in the Reigns of seven several Kings, and those of the most Ancient Kings, there was no such distinction in the Writs of Summons.

2 H. 4.
25 H. 6.
16 E. 2.
27 H. 6.

Another Argument used by these late Authors; to prove that the whole Power and all the Priviledges of the House of Commons, are not from the Original Constitution of the Government, (as I Affirm, and I hope have proved they are) but of a later Original, and by the meer Grace and Indulgence of Princes (as indeed they must be, if the House of Commons began within Memory) is taken from the Words and Phrases of our *Historians*, who have written since the coming in of the *Normans*, and ascribe the making of Laws, and all the Determinations and Decrees in Matters of Judicature, and all the Actings of the Ancient Parliaments before the time of the *Normans*, to the King and Lords only, Exclusive to the Commons, and that the Commons had no part in them, till this time of 49 H. 2.

Object.

And they ground this Opinion upon the Form of Penning of our Ancient Acts of Parliament, which seem by the Words of them to be meer Concessions of our former Kings, and to have proceeded only from their Royal Bounty, and at their sole Will and Pleasure.

Pennings of
Ancient Acts
of Parliament.

And they Confirm themselves in that Opinion, from observing the Course used in the beginning of Parliaments, when the Speaker makes his humble Petitions to the King for the Granting of them Freedom from Arrests, and Freedom of Speech.

Petitions for
Freedom of
Speech, &c.

Now to discover the Falsity of these Grounds, and the Weakness of these Arguments, taken from the Words and Phrases us'd by our *Historians*, I shall shew that our *Historians* who have written since the time of the coming in of the *Normans*, and have Translated the *Saxon Annals*, have in those Translations, instead of the *Saxon Titles*, used the Titles that were never in use before their own Times, which Titles used in the *Saxons* times had quite different Significations from the Titles used in the times of the Translators.

The Title (*Earl*) for Example, is used in the Penning of the *Saxons* Laws (as among those of *Athelstan*) as we may see by Mr. *Lambert* in his Book *de Priscis Anglor. Legibus*, and the Title (*Comes*) came in amongst us since, from the Empire; and signified a different thing from (*Earl*). Now our Translators mistaking those two Titles (*Earl*) and (*Comes*) to signifie the same thing, wherever they met with (*Earl*) in the *Annals* of the *Saxons*, they have rendred it (*Comes*) in their Translations: and whatever in those times was done by *Earls*, and whatever Power the *Earls* then used, is by our Translators ascribed to our *Comites*, who are therefore also called *Earls*, when in Truth they had different Significations, and were different in their Powers. Mr. *Selden* takes notice of this Error in our *Norman*

Tit. of Honour
Fol. 603, 604.

or *English* Translators proceeding from their Ignorance. But from this Error false Conclusions have been raised, and false Measures taken in our Discourses, concerning the Power of the Peers.

Fol. 603. Sir H. Spelman observes the same Error in our Translators, in rendring Words and Titles *Non è more Sæculi antiquioris*, but according to the Titles used in their own times, when many times they signified different things. *Nobilis*, says Mr. Selden, in the *Saxons* times denoted every Gentleman.

Now because (*Nobilis*,) in our times is generally restrain'd to Peers, whom we call the (*Nobility*,) our New Writers, as Mr. Pryn, and Sir Robert Filmer, and several others, ascribe all to the Earls and Barons and other Peers of our times, which they read in the Translations of the *Saxon Annals*, to be acted by those that are called (*Nobiles*) in those *Annals*. Altho' in truth in those *Saxon* times, they were acted by the middle sort of Persons, as well as by those of the highest sort of Dignity under the King.

Those Translators misled our new Authors. For the *Norman* Writers translate the Word (*Thanes*) into (*Barones*) and these new Authors of ours, whatever they find in these Translations to be related of the (*Barones*) they limit it as a Peculiar to our present (*Barons*) and so ascribe all judicial Power antiently used in Parliament to the *Barons* only. And they bring those Historians and Translators for a Proof.

For Example, The *Saxon* Title (*Thanes*) was in the *Saxon* times applyed to all Lords of Mannors. But the Translators of the *Saxon Annals*, translating the Title (*Thanes*) into (*Barones*) Our Innovators apply all that in *Saxon* Writers is said to be done by the (*Thanes*) that is, all Lords of Mannors, as peculiarly belonging to the Power of the *Barons* in our times.

Hence it is that Sir E. C. cautions us against taking Reports of Law from Historians: in his Preface to the 3^d. Rep. he calls it Chronicle Law.

The Word (*Baro*) was not in use in *England* till the *Normans* times, and the Root of it (as Mr. Seld. and Camd. and Sir H. Spelm. teach us) is from the Northern Language (*Barn*) which signifies the Male Sex, as when we put Cases of *Baron* and *Feme*; or it signifies (a *Freeholder*) hence come the Words *Courts Baron*.

Fol. 176. *Nomine Baronagii* (says Camd. Eliz. Edit. Lond. An. 1600. fol. 137.) *omnes quodammodo Regni Ordines continebantur*. It comprehended the Gentry as well as the greatest Persons. After this manner Godwin in his *Roman Antiquities* speaking of the Roman Magistrates, Translates the Words (*Triumviri capitales*) into (3. *High Sheriffs*) but this affords no Argument, that what was done by the *Triumviri* among the *Romans*, may therefore lawfully belong to the power of High Sheriffs among us.
And

And so the Words *Proceres, Magnates, Optimates, Nobiles*, and such like, were not in the Writers of the Saxons times restrain'd to Men of the highest rank then, such as our Earls and Barons are now, but to all Persons of the better sort, tho' not of the highest rank, not only to *Patricians*, and those of the *Senatorial* order, but to those also that were *Equestris ordinis*. Excluding none but the *Ignota capita*, or *sine Nomine turba*, such as the Romans styled *Plebeians*. *Magnates & Proceres*, are said to make the Stat. of *Mortmain*, but we all know that the Parliament that made it, consisted then of King, Lords, and Commons.

The great Charter made 17 of K. John appears by the body of the Charter it self to have been made *per Regem, Barones, & liberos Homines totius Regni*; so that it is most plain it was not made by the King and the Barons only, as Mr. Seld. observes in his *Tit. of Honour*, fol. 709. and there he refers to the *Cloze Rolle* 17 *Johannis dorso membr. 22*. Yet K. H. 3. speaking of this Meeting, calls it *Baronagium Angliæ*, and rot. claus. 28 H. 3. *Pars unica membr. 12. dorso*, it is call'd *Parliamentum de Runni-meade quod fuit inter Dominum Regem Johannem & Barones suos Angliæ*.

As for the other gross mistake, *That the Power of making Laws rests only in the King*, (as Sir Robert Filmer would have it,) which he proves from the Titles of Acts of Parliament, and the Forms of those Acts being by way of Charter and Grant from our Kings in ancient times, as that of *Magna Charta DOMINUS REX CONCESSIT*; and the Stat. *De donis conditionalibus*, *DOMINUS REX statuit*, sure he was no Lawyer that used this Argument, and he never read the Prince's Case.

The Freeholders grand Enquest. fol. 40. & 41.

Nor Sir E. C. 2. *Inst.* nor shall I need to labour in the confutation of this Errour, the fallacy of it being so well known to every Man that wears a Gown. As for that Stat. of *Mag. Char.* whereby the King only seems to speak, and all that is ordain'd by that Stat. runs in the language of the King's Concessions only; yet we know the Stat. of 15 E. 3. c. 1. which confirms it, says of it, that it was ordain'd by the King, Lords, and Commons. The Stat. of 28 E. 1. c. 8. and c. 13. hath these words, *viz. The King hath granted unto his People that they shall have Election of their Sheriffs every year, if they list*. One would take this to be a most gracious Liberty, and an high Condescension if it should be granted now a-days.

28 E. 1. c. 8. & 13. Elect. of Sheriffs.

And our Innovators would be apt to conclude from the words of this Act and from the Penning of it, that the People once had this mighty Priviledge meerly as a Boon from the King, and by virtue of his Grant. Whereas there is nothing more certain and clear than that, the Freeholders (who are often call'd the People, and are the true Proprietors of the Nation and Land) had originally and from the very

very first Constitution of the Nation, the *Election* not only of all *Sheriffs*, but of all other Magistrates Civil or Military that had any Authority over them under the King; so that they had a mighty Freedom in the very Constitution of the Nation, and this overthrows all the wild Fancies of Sir *Robert Filmer*, and Dr. *Heylin*, and some later Doctors, as if all were deriv'd from meer Grace and Bounty, and many other Deductions might be made from the knowledge of this.

The Freeholders had originally the Election of the *Conservators of the Peace*, who are become out of date by introducing our present *Justices of Peace*, who have their Power not by the Elect. of the Freeholders, or are they of their Nomination (as anciently) but nominated by the King, and have their Power by special Commission under the great Seal; and how, and by what means, and in what tempered times this came about, and that this freedom was gain'd from the Freeholders of *England*, you may read in Mr. *Lambard*, in his *Eirenarcha*, fol. 16. 19. 20. 147. It was done by Act of Parliament, in the beginning of K. E. 3^d, and in his Infancy, when his Mother Q. *Isabel* ruled all.

The Freeholders originally and from all antiquity did likewise by Writ at the County-Court styled *in pleno Folkmote* chuse the *Heretochii*; What were those? that sounds like a strange word. I will imitate our *Norman* or *English* Translators in the translation of the *Saxon* Annals, and render it into the *English* style: you may by that rule call them *Lords Lieutenants*, or *Deputy Lieutenants*; for the *Saxon* Laws tell you their duty or office, they were the *Ductores Exercitus*.

See *Lamb. de prisca Anglor. Legibus*, in his *ch. de Heterochiis*, fol. 147.

All these great Officers were chosen by the Freeholders, as our Knights of the Shire are, and as Coroners and Verderers (formerly Men of great Power) are chosen by Writ at the County-Court to this day.

These were mighty Powers and Freedoms, and enjoyed by the People as anciently as any of our Records reach, and are more authentique Proofs than the writings of Historians, and best shew the Native Freedom that the People had by the ancient Constitution of our Government, contrary to all the new Doctrines of our late Writers, and prove that the Priviledges and Freedoms we yet enjoy are not meer Emanations of Royal Favour, as our Novellists would impose upon us.

See Sir *E. C.* to this purpose. 2. *Inst.* 174. § 558.

I could name some great Men that have lately used the same language in Books publish'd *sub magni Nominis umbra*. *Bracton* who liv'd in the time of K. H. 3. l. 1. c. 1. fol. 1. affirms *Legis vigorem habet quicquid de consilio & consensu magnatum & Reipub. Communi sponsione (authoritate Regis præcedente) iuste fuerit definitum & approbatum*. In

The late E. of
Clarend. in his
Answ. to Hobs.

In the last place, that humble and modest way of the People's addressing to their Sovereign either for the making of Laws (which has been very ancient) or for granting of Priviledges (as the Speaker of the Commons hath of late years done) it shews indeed great Reverence, and I do not in the least dislike it; and it becomes the Majesty of the Prince to be so address'd to; but let it not be made an argument that either the Laws thereupon made, or the Priviledges so allow'd, are precarious, and meerly of Favour, and may be refus'd them.

I would be loth to pay Wages and to maintain at my Charges every one that styles himself my humble Servant.

In that Act of Parliament Intituled, *The Petition of Right*, the Title corrects and qualifies it self, 3 Car. 1. the Lords and Commons petition'd the King, but it was for their *Rights and Priviledges*; not for any *new*, but for their *ancient Rights and Priviledges*, and yet they style it a *Petition*. Petition of Right 3 Car. 1.

In the Title of this Act (the Petition of Right) those *res olim insociabiles*, sc. *Imperium & Libertas* are *bene mixtæ*: and from hence is a mixt Monarchy.

In the Stat. of Provisors, 25 E. 3. the Commons *prayed*; they are fond of the word, and I commend it in them; but the word was used by the Figure *Catachresis*, as the Scholars call it; not properly, as appears by the Subject matter of that Act that follows; what was it, I pray, that they so *prayed*? They *prayed* (says that Act) That upon the mischiefs that happen to the Realm, the King *ought*, and is *bound by his Oath*, with the *accord of his People* in his Parliament, thereof to make Remedy and Law. The Peers are here included in the *People*; so that the word *prayed* had it been used to any other than the King, had signified *remonstrated, declared, or represented*. Stat. of Provisors 25 E. 3.

This proves too where the transcendent Power of the Legislature is, and that the Exercise of it, tho' it be free and not subject to coercion, yet it is not at will and pleasure in the Exercise of it, but guided by Rules.

And tho' the Speaker does (upon his being approv'd of by the King) make it his humble Petition to have Liberty of Speech allow'd the Commons; from whence Dr. Heylin, and Sir Rob. Filmer, and others, infer that the Commons enjoy that Liberty meerly by the King's Grace and Favour; yet they are clearly answer'd by the words that accompany that humble Petition, he prays they may be allow'd that Freedom, *as of Right and Custome* they have *Used*, and all their *Antient and Just Priviledges and Liberties*. So that this from the Speaker is also a Petition of *Right*. Mr. Pryn's Plea for the Lords, 389, 390.

Nor is this request of the Speakers antient in the use of it, if we may believe Mr. Hakewel, in his Treatise of the manner of Enacting Statutes in Parliament, fol. 136.

Thomas Moyle Speaker, 34 H. 8. the first that is recorded to have made Petition for Freedom of Speech.

I hope I have sufficiently made it out, that the House of Commons as a Member of the High Court of Parliament, are not of so late an Original, as 49 *H. 3.* but have been as Antient as the Nation it self, and may in the Sence of *Julius Cæsar* in his *Comment.* be accounted among the *Ab-Origines*, and that they have had a perpetual Being, to speak in the Language of the Law, *temps dont, &c. à tempore cujus contrarii memoria hominum non existit*, and that they are therefore capable by Law (together with the rest of the three Estates in Parliament) to prescribe and claim a share in all Parliamentary Powers and Priviledges; I do not mean separately, but in conjunction with those other Estates, which they could not otherwise legally have done, if their Original and Commencement could have been shown.

All three
Estates one
entire Body
and Corpora-
tion.

I shall in the next place endeavour to make it evident, That the three Estates of Parliament are one entire Body and Corporation; and that all their Powers and Priviledges in the *Right* of them, and in the Title to them, are intire, *per my & per tout*, and belonging to the whole Body of the Parliament, tho' in the *Exercise* of those Powers, and sometimes in the claim of them they are distinguish'd, and in the practice of their Powers, they are in many things distributed into parts.

For their *Powers* are one thing, and their *Priviledges* are another; the latter are but an incident or attendant upon the former.

It is very material in our present case to have this matter consider'd, I mean the Intireness of this High Court; for *Divide & Impera*: The Faggot is easily broken when first the Band is broken. If this be well consider'd, the consequence of this Case will be better understood.

It concerns the Defendant only by name and more immediately, but in the right and near consequence, it is now most evident, that it nearly concerns the House of Lords: this Information of Mr. *Attornies*, like a *Terræ-motus*, or as that great Blast would have done (had not Almighty God, in his Infinite Goodness to this Nation, prevented it) shakes the Foundation of both Houses, and reaches to all future Parliaments; it frights me to speak what may be the effects of it, if it should prevail and be stretch'd to the utmost. I am far from saying or thinking it is so intended. But who knows how far a single Precedent will be made use of in times to come?

14 *H. 8.* 3.
Fineux Ch.
Just.

All the Estates, in Parliament, are all called by one common name, as *Commune Concilium Regni, Magna Curia*, They are one Body Politick, *M. 14 H. 8. fol. 3.* in the year-book (which I cited before to another purpose) it is said by *Fineux Ch. J.* that the Parliament at the Common-Law, consists of the King, Lords, and Commons, and they are (*saies he*) but one Body Corporate.

This proves likewise (what I before argued) that the Commons at the Common-Law (which is *ab initio*) were a part of the Parliament.

In

In the Case of *Ferrers* out of *Crompt. Jurisd. of Courts*, fol. 8, 9, 10. (for I keep within my proper Element, and move in my Sphere, and cite Authors of our own Science of the Common-Law) K. H. the 8th. call'd before him the Lord Chancellor, the Judges, the Speaker of the House of Commons, and others, and thus express'd himself before them, viz. That he was inform'd by his Judges, that he the King as Head, and the two Houses as Members, were knit together in *one Body Politick*, so as whatsoever Offence or Injury (during time of Parliament) is offer'd to the meanest Member of the House, is to be judged as done to the King's Person and the *Whole Court of Parliament*. And Sir *Edward Mountague* the *Ld. Ch. J.* then present, confirm'd all that the King had said, and it was assented to by all the rest of the Judges. Now if you bruise or pierce the hands; (and the House of Commons may well be compar'd to the hands, for they have been the Liberal Hands, and the Hands feed the Head) the Head and all the rest of the Body must quickly be sensible.

In *Trewinnard's Case*, *Dier.* 60. and 61. The Priviledge of the Commons upon this very account, is term'd *the Priviledge of the Parliament*, and the Judgment given in that Case by the House of Commons, is there said to be *the Judgment of the most High Court of Parliament*.

The Statute of 1 Jac. C. 1. saies the Parliament is *the whole Body of the Realm*.

By the two Records that I cited before out of the Office of Pleas in the Exchequer, 12 E. 4. It appears in two several Cases of Priviledge, the one concerning the Lords, and the other concerning the Commons, in both Cases the Priviledge was laid and claim'd as *one entire Priviledge*, and so allow'd by the Judgment of that Court, by advice of all the Judges of both Benches.

The Speaker of the House of Commons, by the Rolls of Parliament, (which are the most proper proofs in a thing of this Nature) is term'd *the Speaker of the Parliament*, so it is in the Roll of 1 R. 2. in Sir Robert Cotton's *Abr.* fol. 155. it was in the Reign of a King that was no favourer of Parliaments.

Sir John Bussey, *Speaker to the Parliament*, Sir Robert Cotton's *Abr.* 20 R. 2. num. 14 and 15.

51 E. 3. num. 87. Sir Robert Cotton's *Abr.* fol. 151. Sir Thomas Hungerford *Speaker of the Parliament*.

And so is the Speaker of the Commons stiled in the Case of *Ferrers* in *Crompton's Jurisd. of Courts*, fol. 8, 9, 10. (before cited.)

In the Statute of 6 H. 8. C. 16. the Clerk of the House of Commons, is called *Clerk of the Parliament*.

In the Case of *Godsol* and Sir *Christ. Heydon*, 12 Jac. in *B. R.* in Sergeant *Roll's Rep.* fol. It was affirm'd by Sir E. C. that in ancient time *all the Parliament sate together*, and the separation

was

This is contradicted by Mr. Pryn, in his Preface to Sir Rob. Cotton's *Abr.* fol. 5, 6. was at the desire of the Commons, notwithstanding (*saies he*) they are but *one house*: and he further affirms, that he had seen a Record, 30 *H. 1.* of their Degrees and Seats.

Having made it appear that the Parliament is one intire body, and therefore mutually concern'd in Powers and Priviledges as to the Right and Title of them, tho' dividod sometimes in the Exercise. I shall proceed briefly to shew what those Powers are, in order to the proving that what in our Case is charg'd to be done by the Speaker, by Order and Command of the Parliament, (for so I may now affirm) is pursuant to their Power and Jurisdiction.

The Powers of Parliament.

The Parliament hath three Powers.

Of the Power and Jurisdiction of the Parliament.

1. A Legislative, in respect of which they are call'd *the three Estates of the Realm*.

2. A Judicial, in respect of this 'tis call'd *Magna Curia*, or the High Court of Parliament.

3. A Counselling Power, hence it is call'd *Commune Concilium Regni*.

For the proof of these, I shall cite some few Antiquaries, but chiefly some Authors of our Profession of the Law, and those of the best Authority with us.

I shall mention them without observing any exact method, because divers of them extend to more than one of these distinct Powers, and some of them refer at once to all of them.

Sir Henry Spelman in his *Glossary Tit. (Gemotum)* which was the old Saxon word for a Parliament, fol. 261. *Convenere* (*saies he*) *Regni Principes tam Episcopi quam Magistratus* (there are those that now make up the House of Lords) *Liberiq; homines* (there are the Commons) what is their proper Work and Power? *Consultitur de communi salute, de pace & bello*. This proves them the *Commune Concilium Regni*.

Learned Camden.

Quod Saxones olim Wittenam Gemot nos Parliamentum recte dicimus, as to their Power, *Summam & Sacro-sanctam auctoritatem habet in legibus ferendis, interpretandis, & in omnibus quæ ad reipubl. salutem spectant*. This shews their *Legislature*.

The Mirror of Justices, (this is an Authority in Law) C. 1 fol. 9. *saies*, Parliaments were instituted *Pur oyer & terminer*; this is the Supream Court of *Oyer and Terminer*. The Court of King's Bench is said to be above all Courts of *Eire* or *Itinerant*; and if the King's Bench be adjourn'd into any County, where the *Eire* is sitting, the *Eire* ceases, *In præsentia Majoris, &c.*

But this Court is above the King's Bench and all Courts of *Oyer and Terminer*. The King's Bench is the Highest *Eire*, but this is (according to Solomon's Hyperbole) *higher than the highest*.

But what is the proper Subject of their *Oyer and Terminer*? Our Antient Author (who wrote some part of his Book before the Conquest)

Conquest) tells us their work is to hear and determine *les plaintes de tort le Roy, de la reigne, & de leur Enfants*, (the King's Children) so that they make an *Impartial Enquiry*, but saies our Author further, *De eux specialment de queux torts l'un ne poit aver autrement common droit*, this flies very high to prove their *Judicial Power*. I forbear to English it.

It is the proper work of this Supream Court, to deal with such Delinquents, as are too high for this Court of the King's Bench or other ordinary Courts. Against whom, through their Potency or mighty Interest, common right cannot be had, it must be understood in ordinary Courts. And the Writing and Printing of this, was never taken to be a Scandal to the Government or to the Justice of the Nation. For the Author speaks in the Person of the King himself, and tells us, that the High Court of Parliament is arm'd with a Power, able to cope with and quell the most insolent Offenders.

When the Great Judge of all the Earth comes to make Inquisition for Blood, and to Execute Judgment by the hands of this High Court. *The lofty looks of man shall be humbled, and the haughtiness of men shall be bowed down and made low.*

To discourse of this Judgment, will make a *Fælix tremble*.

We have often heard it confidently said from the Pulpit. That our Laws are like the Spiders Webs, which catch the little Flies, but the great ones break through them.

Now it is quite contrary with this great Court, this great Court encounters only with great Offenders. It is like the Imperial Eagle, *Aquila non capit Muscas*, it leaves them to this and other Inferiour Courts, but that takes to task the *Animalia Majora*.

In that great Case, *Rot. Parl. 40 E. 3. num. 7.* King John had resign'd up the Crown of *England* to the Pope, by the hand of *Pandolphus* his Legate, and sordidly submitted to take the Crown at his hand again, at a yearly Tribute.

In the Reign of our noble King *Edward* the 3^d. the Pope demanded his Rent and all the Arrears.

The Prelates, Dukes, Counts, Barons, and Commons, resolv'd that neither the King nor any other, could put the Realm nor the People thereof into subjection, *sans l'assent de eux.*

This intimates, that with their joint consent the Crown may be dispos'd of.

This was the highest Resolution in Law, in one of the highest points in Law, concerning the King's Claim of an Absolute Power, and in a time when the Pope was in his height. And the Commons join in the Resolution, both against the Pope's and King *John's* pretence to a Despotick Power.

Sir *Tho. Smith* who was a Secretary of State, in his *Commonw. l. 2. c. 2. fol. 50, 51.*

In Comitibus Parliamentariis posita est omnis absolutæ potestatis vis (taking in the King as the Head of them, as it ought to be under-

stood) this shows where the rightful absolute Power under Almighty God is. And among other *Magnalia* he tells us, *Incerti Juris Controversias dirimunt*. This shews their transcendent Judicial Power; they determine the greatest Disputes and Doubts in Law. They would quickly decide this Dispute and Controversie, (were it once before them) without Argument.

This appears to be the proper business of a Parliament, even from the Writ of Summons both to Lords and Commons, (for they did not Anciently differ in any thing material (as I have abundantly shown already) they are *De Arduis Regni tractitare*, & *Concilium impendere*, here is their Councelling Power. According to that Equitable Rule, *Quod omnes tangit, ab omnibus tractari debet*.

Their Legislative Power is most clearly set out by *Bracton* (a Judge in the time of *K. H. 3d.* in whose latter times our Innovators would have the House of Commons to begin) I cited him before; *Legis vigorem habet* (says he) *quicquid de Consilio & de Consensu Magnatum & Reipubl. communi Sponsione (authoritate Regis præcedente,) juxta fuerit definitum & approbatum* 5 *H. 4. Num. 11.* The Record there uses too gross a Word. The Commons (says the Roll) require the King, it should have been, made it their Request to the King (and the Lords accorded) that four special Persons should be remov'd out of the Kings House.

This in some Ages, as in the Reign of *K. R. the 2d.* would have been thought a very high presumption, and a sawcy thing (to speak in the Language of the Pulpit, and Press too from a late *Cambr. Dr.* and a Chaplain in Ordinary, (if the Title of the Print may be credited) but said to be printed by the—— of that University. A sawcy thing with their Prophane and Unhallowed Hands to presume to meddle in a thing so Sacred. (Thus says the late Printed Sermon) *But it was a Sacred or Consecrated thing indeed in this Roll of Parliament mention'd.* One of the 4 required to be remov'd out of the King's House, (where he was a Domestick) was no less than the King's Confessor. And it was not in the Reign of a *R. the 2d.* or *H. the 6th.* but of *K. H. 4th.* one of our Wisest and most Active Valiant Kings.

But it may be thought that these four Persons were in some desperate Popish Plot of killing the King, as the four we have heard of, were.

No, the King himself will resolve that Doubt.

That noble King said in answer to it, *He knew no cause wherefore they should be remov'd, but only for that, they were hated of the People.*

And yet that great King charged those Four to depart from his House.

This proves their Councelling Power.

I might enumerate a vast multitude of *Animalia Majora*, no small Flies, that have in several Ages been catch'd in the Net or Webb of an Inquiry made by the House of Commons, who
fish

fish only for such greater Fish, such as we call the Pike, who by Oppression live upon the smaller Fish, and devour them. The Commons to that end fish with a Net, that has a wide and large Meshe, such as lets go the small Frye, and compasses none but those of the largest size. Such as the Lord Latimer in the time of E. 3. An. 50. Such as Michael de la Pool E. of Suff. and Lord Chancellour, in 10. R. 2. Tho. Arundel Archbishop of Canterbury. 21 R. 2. and such like. William de la Pool D. of Suff. 28 H. 6. who were all impeach'd by the House of Commons in several Parliaments.

And I my self have seen a Lord Chief Justice of this Court, while he was Lord Chief Justice, and a Learned Man, by leave from the House of Commons, pleading before that House for himself, and excusing what he had done in a Tryal that came before them in the West, whereof Complaint was made to the House. And he did it with that great Humility and Reverence, and those of his own Profession and others, were so far his Advocates, as that the House desisted from any further prosecution.

In the the late Act of 13. of his now Majesty for safety of his Royal Person, there is a *Proviso* for the saving of the Just Antient Freedom, and the Priviledge of either of the Houses of Parliament, or any of their Members, of debating any Matters or Business, which shall be debated or propounded in either of the said Houses; or at any Conferences or Committees of both, or either of the said Houses; or touching the Repeal or Alteration of any old, or the preparing any new Laws; or the Redressing of any publick Grievances. I observ'd but now out of *Trewinn*. Case in the *Ld. Diers* that the Judgment of the House of Commons in a Case of the priviledge of that House, in that Report, is called a Judgment of the most high Court of Parliament; which proves they are not without a *Judicial Power*.

3 H. 6. Sir Rob. Cott. Abr. fol. 574. The great Case between the E. of Warwick and the Earl Marshal for Precedency, fol. 576. was determin'd by the King. By Advice and Consent of the Lords and Commons; and yet one would have thought that a Case of Precedency between two Peers, should have been a peculiar of the Lords.

In the Case of 1 H. 7. in the Year Books, fol. 4. about reversing of *Attainders*, it is advis'd by all the Judges, that those Knights and others of the House of Commons, should not sit in the House, till the Act for reversal of their *Attainders* were pass'd. And the Reason is, that it is not convenient, that such as were attaint should be Judges; (and it might have been added in their own Case) so that attainting by Bill, or Reversing *Attainders*, tho' by Bill, is most properly a Judicial Act, and the Members of the House of Commons are acknowledged to be Judges in that Case by all the Judges, and by that Statute of 6 H. 8. C. 16. which I mention'd before to another purpose, the *Journal of the House of Commons* is call'd a *Record*.

I have formerly observ'd, but to another purpose too, that the Writs of Summons anciently for Electing Knights, Citizens and Burgeses to Parliament, did direct them in their Duty, that they were to meet *ad Consulendum & Consilium impendere*, tho' of late Years this has been omitted, and now advantage is taken of it.

Nothing acted in this present Case, but what is within their Power.

Let us in the next place examin whether the matters acted in this Case by the House of Commons be Warranted by these Powers, of the Parliament, and have been done in pursuance of those Powers.

And upon Examination, we shall find they have done nothing but what they had a full power to do, and what is agreeable to the Law and Usage of Parliament.

It is set forth in the Plea, (and admitted by the *Demurrer*, but we all know it to be true) that there was an Horrid Devillish, &c, Popish Plot. The Enquiry after which, and the searching of it to the bottom, and discovering all the Accomplices, was *Negotium Arduum*, and it did, *Regem & Statum Regni specialiter tangere*, according to the Writ of Summons to Parliament.

For the Plea tells us the design of it, *viz. to Kill the King*. 2^{ly}. To subvert the Government and the Laws, to suppress the True Religion, and to destroy the Professors of it.

The Plea shows, that One great Lord was convicted of it by Impeachment of the Commons, and attainted before the Lords. The Kings Speech shows there was need of further Enquiry, and that it was not as yet thoroughly done, nor himself, nor the two Houses safe; and the King charges both Houses to make an *Impartial* Enquiry. The word *Impartial* imports, there might be some great Persons concern'd, that might be apt to be favour'd.

And the Plea shows that both Houses accordingly made a strict and impartial Enquiry after the Conspiracy.

All this appears plainly to be the proper Work of a Parliament, and his Majesty himself was of that Judgment, and charged them to do their Duty in it.

And the Enquiry is the most proper Business of the House of Commons.

The House of Commons the Grand Inquest of the Nation.

For this Reason they are commonly styl'd *The Grand Inquest of the Nation*. tho' Sir Rob. Filmer's bold writing terms them so by way of Diminution and Contempt, (as if enquiry were their highest work).

This Inquiry of theirs is necessary in a Subserviency to all the several High Powers of that High Court. Namely, in order to their Legislature, or to the Exercise of their Power of Judicature.

Courts that have Power of *Oyer and Terminer*, and to punish Great and Enormous Crimes, are still by their Commissioners arm'd with a Power of Empannelling grand Inquests, to make Enquiries in order to their Exercise of their Power of determining.

Or it may be in order to their Counselling Power, for removal of great Officers or Favourites, whereof I have given an Instance,

stance, and the Parliament Rolls and Journals are full of them.

But still they first make Enquiry. They enquire among themselves, and every Grand Jury Man by his Oath, is to impart his Knowledge in any thing Material to his Fellows. But the most effectual Enquiry is most probably from without doors; and without such enquiry, things of great importance may lye conceal'd.

And the Defendants Plea shows some good effect of that Enquiry. Diverse were convicted: And one *Tho. Dangerf.* deliver'd in an Information, and that upon Oath, and first to the Lords House, so that it did not begin with the Commons; but if it were so Infamous and Malicious, why did not the Lords Reject it, and Commit the *Informer* and punish him? No, they receiv'd it, and Entred it of Record in their Journal. The Reason was, it was done in a Course of Legal proceeding, they could not reject it, being the proper Court of Justice for a thing of this Nature. And the King had given it them in charge to enquire. Nor do they by receiving of it give it any Countenance or Credit. Then why should it be so heinous a thing in the House of Commons, more than in the Lords? Let us remember still they are but one Body; and though they sever themselves for their better dispatch of their great Affairs, and distribute the Work amongst them, yet the Power by which they Act, is Entire.

But why should any man divide and sever those that are Entire? It concerns the Lords equally with the Commons.

But how comes it to concern the Speaker of the Commons so highly above the House it self, who Acts meerly as a Minister, and by Command of the House; but that, I reserve for a point distinct.

But perhaps it may be allow'd, that what is done by either House, in receiving *Dangerfield's* Information and entring of it in their Journals is Parliamentary enough. But the Offence and Scandal arises first upon the publishing of it in print. Now a word or two to that.

The printing
Dangerfield's
Information.

Let us consider how publick this Information of *Dangerfield's* was before the printing of it. It was made very publick by being deliver'd at the Bar of the Lords, the High Court of Parliament; and indeed all Courts of Justice ought to be open and of easie Resort.

The Information of *Dangerfield* is first made a Record of that Court, and to a Court of Record any person may resort, as Sir *E. C.* tells us in his Preface to the 3^d. *Rep.* and that it was the Ancient Law of *England*, and is so declar'd by a General Act of Parliament, 46 *E. 3. C.* which tho' a general Law is not in the printed Book of Statutes, as I observ'd of another general and useful Act of Parliament before (however it comes to pass) In that Act of 46 *E. 3.* the Commons prayed that a Record of whatsoever is done in the King's Court, ought in Reason to remain there for perpetual Evidence for all persons. And they complain that of late the Court had refus'd to suffer the People to search and

46 *E. 3. C.*
Search of Records must be
Free.

to have Exemplifications for evidence against the King or to his disadvantage.

Therefore they pray that search and Exemplification be made to any persons of any Record whatsoever, though it concern the King or any other, and make against the King or any other.

And the Answer is, *Le Roy le voet*.

But then it was made more publick, by being deliver'd in at the Bar of the House of Commons, which ought to consist of about 500 Members, who are suppos'd to come from all parts of the Kingdom: So that this was made very publick, before this publishing of it in print.

Let me observe by the way, that this Author of the Information (*Tho. Dangerfield*) was not sent for by the House of Commons, but for any thing that appears, applies himself to the House of Commons, as he had before done to the Lords, of his own accord, so that this is far from malice or ill design.

The Commons order it to be entred in their Journal, among other Informations that had been given them.

And besides, they order this and several others to be Printed.

The Offence and Scandal is suppos'd by Mr. *Att.* Information to begin here: what need was there of printing it?

I wish we could hear the House of Commons answering for themselves to this point: they could (it may be) give a better account of it, and a sufficient reason for the Printing of it.

But let it be observ'd, they barely cause it to be Printed.

They do not give any Attestation or Credit to it, but leave all that hear or read it, to judge or believe as they think fit. They do not make it their own, by printing it without mention of the true Author, they style it the Information of *Tho. Dangerfield*, as indeed it was; they do not adopt it their own, as they had done, had they left out the name of the Author.

Nay the Author himself had deliver'd it in a course of Justice, and in the Highest Court of Justice, *i. e.* before the Lords in Parliament. If it were a Libell and Slander, why did the Lords

See the 1st. St. in such Cases of Reporting false News, viz. W. 1. C. 34. the Reporter is only to be imprison'd till he have found out him of whom the word was moved. So is 2 R. 2. C. 5. the Stat. de Scandalis Magistratum. So is 12 R. 2. c. 11. Dier 155.

receive it, and cause it to be entred of Record as they did? Why did they not rather reject the Information and punish the Author?

If it were no Crime in the Author to deliver it to the Lords, were it true or false, Why should it be a Crime to Print it as being his, and with his Name?

Whether the matter of that Information were true or false, yet what is done by the House of Commons and by the Defendant as their Speaker, is all true, that is that *Tho. Dangerfield* had drawn up, and was the Author of such an Information, and this was true. By the Statutes that punish the Reporters of false News, the penalty is but Imprisonment, till the first Author be brought forth, and that is done in this Case.

The

The Author is avouch'd, and his name is Printed with the Information, and it is upon Record in the Lords House, and he in person did present it to the Lords.

Besides, if there can be any just reason or occasion assign'd for the Printing of it, it shall never be ascrib'd to malice or ill design, and without malice alledg'd, this Information lies not.

Nor can a thing so dishonourable as malice and ill design, be decently or justly conceiv'd or objected against so Great and Grave an Assembly: why? it is the Body of the whole Nation.

And can a whole Nation be in Reason suspected to harbour Malice, and to have a Design against the Common-weal, that is against themselves?

There may most probably and justly be this in the Case, to induce the Printing this Narrative or Information of *Danger-field*.

The Plot was very desperate and dangerous, it was not yet fully discover'd and search'd to the bottom.

They were Commanded by the King to search further into it. Besides it was the proper work of the House of Commons so to enquire, as they were the Grand Inquest of the Nation.

Here was one positive Witness already that had sworn to these particulars, before the Highest Court of Justice, where the great Persons concern'd in it, sate themselves as Members of the Lords House.

But one Witness alone, though it were sufficient to make an Accusation, yet it was not enough to make a Conviction; in High Treason the Law requires two at least.

The House of Commons could not in Duty and Conscience to the King and Kingdom, pass it by or let it sleep.

This Information tho' but from one man, might possibly have given Courage to another Person or more than one to testify to the same particulars, if there were any more that knew them to be true, who were unwilling to be the first in the discovery, not knowing but they might stand singly in it: but finding the discovery already made and sworn to, might then think it their Duty, and be encouraged to appear also in it, when it might probably be of effect and amount to a Legal Testimony. The difficulty, and the danger, and discouragement, lay upon the first Informer.

This Consideration might induce the House of Commons out of a Sense of their Duty, to make a further and impartial enquiry as his Majesty had commanded them, to make it yet (if possible) a little more publick in order to a fuller proof: and Printing is but one way among many other of Publishing or Enquiring into any matter.

The Lady Mor-
rison's Case
Crok. Jac. 162.
but more fully
in Marshes
Actions of
Slander. fol. 19.
20. If an action
of Slander
be brought for
Reporting
what another
had said Slan-
derously, the
Pl. in his De-
claration must
aver that A.
did never so
report: the
Defendant
may Plead
that in truth
A. did so re-
port, and it is
a good Plea, by
Tanfield.
Leonards Rep.
i. p. 287. in an
Indictment
upon the Stat.
of W. 1. c. 33.
and 2 R. 2.
c. 5. for re-
porting false
News, it was
found *billa ve-
ra* as to the
Defendant's
reporting the
false News,
but as to the
*maliciose & se-
ditiose, Ignora-
mus*, and the
Defendant
herefore dis-
charg'd.

And

And of late years enquiry by Printing has been a most frequent practice, and we meet with it every week, and it is become the most ordinary way of making enquiries, which run into all parts of the Nation. And the Printing of publick Proceedings at Tryals, has been generally of late practis'd by the Courts of Law, or by the Judges of those Courts, or by the chief of them.

But what has made this Information of *Dangerfield's* more publick, than Mr. Attorney General's preferring this Information against the Defendant Mr. *Williams*, for causing it to be publish'd in Print?

Had it not been thus awaken'd again, it might have slept in silence, and have been Buried in Oblivion.

Tacitus the Roman Historian tells us in his Annals in the Life of *Nero*, of one *Fabricius Veiento*, who was accus'd for uttering slanderous Speeches against the Lords of the Senate and against the Priests, in certain Books, which he termed *Codicello's*, which in our Dialect, is the same with Libels or little Books.

Nero would have the hearing of the Cause himself, and he was Convicted before him, and was Condemn'd to Exile, and his Books were Sentenced to be burnt.

Tacitus observes, that before this Sentence for the burning of the Books, there was little notice taken of these Books, and few there were that read them: but when once it grew dangerous to read them, then they were much sought after.

But the very opening of that Information of *Dangerfield* here in this great Court, and in so great an Audience, which was of necessity, and occasion'd by Mr. Attornies Information that recites it, tho' Mr. Attorney never intended this ill consequence, hath made the matter of it as publick as possibly can be.

And it must be observ'd, that it never yet came so far as to a Tryal, nor to have an Ignoramus found, much less to an acquital *modo legitimo*, in which case, according to the Opinion of some Judges, an Action of Conspiracy, or upon the Case for a Slander will not lye, as not being ripe for it till an Acquital: by the same Reason it is not ready for an Information, which is but the King's Suit, the Reason being the same in both.

But

But it may perhaps be thought, that in respect of the Persons concern'd in it, this was too high a Flight, and too bold an Attempt, and that the height and eminence of some persons may exempt them from common Justice, and from the Power even of a Parliament.

The Persons
too great to
be so used;

In answer to which, I would observe, that some Laws are more especially levell'd against the Highest Subjects.

By the Statute of W. 1. c. 5. The King forbids that *nul haute homme*, no High or Great Man, upon pain of grievous forfeiture, disturb Elections, but Elections ought to be free.

The like may be observ'd in the Statute of W. 1. c. 35. *Des hautes hommes*, &c.

And the greater the Persons are, if they are in the rank of Subjects, they must be subject to the King's Laws, and they are the more proper for the undertaking and encounter of this High Court. It will not be *Impar congressus*.

I cited before, *the Mirror of Justices*, Chap. 1. Pag. 9. where it is said, that Parliaments were ordained for to hear and determine in such wrongs, and against such Persons, especially against whom otherwise Common Right cannot be had.

I will cite no Historians to prove what hath been done in Antient Times within this very Kingdom, of this Nature against the highest Subjects.

I will keep still within my own Sphere, and cite none but Authorities in Law. And so keep my self in the way that belongs to me, and so doing, I am under the Protection of this Court and of the Law, and may relye upon the performance of that Blessed Promise, *He will keep thee in all thy ways*.

There must be no respect of Persons in doing Justice. The great Judge of all the World gives it as a Rule, and himself gives the Example, *God is no respecter of Persons*.

The King was pleas'd to charge both Houses, to make a strict and impartial Enquiry.

I shall cite two Authorities in Law, that come to this point.

N

The

John, Earl of
Moreton.

The first is in Case of a Brother and an Heir apparent too, and of a Person that did after succeed in the Crown. King Richard the 1st. in his *Magna Curia*, *petiit sibi Judicium fieri de Comite. Johanne fratre suo qui contra fidelitatem quam ei juraverat, Fœdus contra eum cum inimico suo Rege Franciæ inierat*. That was the Offence charg'd.

It may possibly be Objected that the King himself complain'd: True, but he complains to the proper Judicature: This proves their Power.

Hunts Arguments for Bishops, fol. 80.

But what did the High Court do upon that Complaint?

They pronounc'd a very severe Sentence, tho' it were but in the Nature of a mean process to make him appear, and Answer.

Seld. Tit. of Hon. fol. 707. The Lords Order or adjudge, that if John Earl of Moreton did not appear within 40 Days after Summons, *Judicaverunt Comitem Johannem demeruisse Regnum.*

Let me remember you of a stronger and higher Case; and I have it out of an Author of the Law too. *Crompt. Jurisd. of Courts* in his Chapter of the Court of the King's Bench.

In a Case of *Corpus cum Causa*. Whidden, one of the Judges of the Court, cited a Case that did happen in the time of *Gascoign Ch. J.* in the Reign of King *H. 4.* *Gascoign* committed the Prince of Wales (who was afterwards our King *H. the 5th.*) to Prison for endeavouring to take away a Prisoner from the Bar of the King's Bench, and the Prince humbly submitted and went to Prison, and the King hearing of it, commended it.

If the King's Bench, being an Inferior Court to that high Court, might soar so high, how much more the highest Court of the Realm; where the King sits in the Exaltation of his Orb, and is in his greatest Splendor?

The King indeed is presum'd in Law to be in this Court, which makes the style of its proceedings to be *Coram Rege*, and some of our Kings have been said to have sat here. But the King is in his High Court of Parliament, *per Eminentiam*, as *K. H. 8.* one of the highest and most resolute of our Kings, said in the Case of *Ferrers* (which I cited before to another Point.) That he was informed by his Judges, (who were all then present)

sent) that he in no time stood so high in his State Royal, as in the time of Parliament. Then if we consider the Person whom the *Ch. J. Gascoign* Committed. He was a continuing, settled, fixed Heir, and then Prince of *Wales*, whose Chair now stands Vacant in the Lord's House in time of Parliament, and afterwards this Prince of *Wales* proved a Renowned King.

Nescit Imperare qui nescit obtemperare. The Sacred Scriptures tell us, that the *Heir differeth nothing from a Servant*. I may say also from a Subject, *until the time appointed of the Father*, Gal. 4. 1, 3.

What would the Author of the Sermon preach'd before the University have said in these Cases that I have cited ?

He would have call'd them Unwarrantable Proceedings, and would have affirm'd that the Persons thus proceeded against, were too sacred to be touch'd with such unhallowed Hands. This hath been the Bold Language from the Pulpit and the Pits, if the Title of the Book be true from a *Cambr. Dr. Oblitus Professionis suæ, quæ nil nisi lene suadet & justum.*

And the Author while he was guilty of gross Flattery on the one hand, was not afraid to run into the other Extremes, of speaking Evil of Dignities, on the other hand, of one of the three Estates of the Realm, of the Representatives of the Great Body (whereof he himself makes but a small inconsiderable Atome).

So called *Elizabeth C. 3. 4 H. 8. c. 8.* the House of Commons call'd the *Honourable House* in the Petir. of *Rich. Strode*, which is part of the Act.

We know from certain and undoubted Histories of our own, that in the time of King *H. 8.* greater Persons in the Account of the Law than the Prince of *Wales*, and yet but Subjects of the King have been brought to Tryal, and that before Lords Commissioners; and however, in other Respects their Cases might be very hard, yet it was never doubted but they were Subject to the Law and Justice.

Now to proceed to my second Point, wherein I shall be brief. *viz.*

That however, the Matters Charged in the Attorney General's Information are not to be imputed to the Defendant in this Case: He being but the Minister or Mouth of the House, and Acting only by their Order.

He

He is frequently in the Parliament Records styled the *Mouth* of the House whose Speaker he is.

Mr. Pryn *E*
Contra in his
Preface to Sir
Rob. Cott. Abr.
but nothing
clear.

Mr. *Hakewell* in his Treatise of Parliaments fol. 200. among the Catalogue of Speakers, begins with *Petrus de Mountf.* whom he makes Speaker 44 *H. 3.* of the House of Commons, and he cites the Register of *St. Albans* for it, Fol. 207. where it is said that *Petrus de Mountford Vice totius Communitatis* consented to the Judgment of Banishment of *Adomar de Valence* Bishop of *Winchester*, and Sir Robert Cotton agrees with Mr. *Hakewell* in this Point. Mr. Pryn in his Preface to Sir Robert Cotton's *Abr.* is of an Opinion by himself, that *tota Communitas* signifies the whole Baronage. But it appears by the Body of the Letter there written, that *Communitas* is distinguished from the *Majores*. Sir Robert Cotton's *Abridgement* 6 *E. 3.* fol. 12. in the upper part, It is said, the Lords and Great Men by the *Mouth* of Sir Henry Beaumont.

Mr. *Hakewell* in his aforesaid Treatise, speaking of *William Trussel*, says, the Commons answered by his Mouth. 13 *E. 3.*

2 *R. 2.* Numb. 16. Sir Robert Cotton's *Abr.* fol. 174. The Commons return their Answer to the King by Sir James Pickering their Speaker.

17 *R. 2.* Numb. 17. Sir R. Cott. *Abr.* 353. The King advising with the Commons, concerning a Peace with *France*, return their Answer by Sir John Bussey their Speaker.

Mr. *Hakewell* in his Book before cited, fol. 205. 7 *H. 4.* says, that Sir John Tiptoft, while he was Speaker, signed and sealed the Deed of Entailing the Crown with these words, *Nomine totius Communitatis.*

Mr. *Elsing* in his Treatise of Parliaments, fol. 125. tells us, that what was spoken by the Speaker is entered in the *Rolls*, as spoken by the Commons.

But take what is done by the Defendant to be his proper acting, yet he acting only as a Minister and Servant to the High Court of Parliament, by the ordinary Rules of Law, in Cases of Officers, he is not suable, nor any way punishable for it.

This

This is Resolved in the *Countess of Rutland's Case* 6 Rep. 54. and the same Case likewise Reported in *Moor's Rep.* 765. That an Officer or Minister executing Process which is erroneously awarded (as where a *Capias* is awarded against a Peer) the Officer is to be excus'd; for he must not dispute the Authority of the Court, but obey. And in that Case the Secondaries of the *Counter*, and the Serjeants in *London* were excus'd and held not guilty of any offence.

So in the Case of the *Marshalsea*, 10 Rep. 76. Where the distinction is, If the Court have a Jurisdiction, the Officer is excus'd though the Process be Erroneous. *Qui jussu Judicis aliquod fecerit, non videtur dolo malo fecisse quia parere necesse est.*

Keilwey 99. a Med. by *Brudnel*, and the Lord *Dier* in *Trewinnard's Case* fo. 60. b Where a Writ of Privilege in case of a Parliament-man Arrested, is granted, where it ought not to be; and the Sheriff by virtue of that Writ discharged the person Arrested. Yet the Sheriff (saith that Case) is not chargeable in an Action for this: *Parere necesse est.* What that necessity is we may see in that Case of *Trewinnard*, *Dier* fo. 61. a Med. if the Sheriff refuse to execute the Writ.

And as a fair warning to Sheriffs, and other Officers not to resist or disobey the Commands and Orders of the House of Commons, the Lord *Dier* mentions what punishment was inflicted upon the Sheriffs of *London*, in the Case of *Geo. Ferrers*.

They were committed to the *Tower* for their contempt in not letting a Parliament-man taken in Execution, to go at large, when the Serjeant at Arms of the House of Commons came for him without a Writ.

Nay the Lord *Dier* says, in the latter end of that Case of *Trewinnard*, that if the Parliament err'd (he speaks it of the House of Commons) yet there is no default in the Sheriff.

When the late King being in Person in the House of Commons, and sitting in the Speaker's Chair, ask'd the then Speaker, Whether certain Members, whom the King named, were then in the House. The Speaker answer'd readily, and wisely, and with a good presentness of mind (which arose from the Genius of that House) *That he had neither Eyes to see, nor Tongue to speak*, but as the House was pleased to direct him.

III. POINT. As to the last Point; That for matters done in or by the Parliament (as the matters in our Case are) neither the *King's-Bench*, nor any other Court, but the Court of Parliament it self, can by Law take Cognizance of it. *This is the great Point of the Case.*

I shall first offer to prove it by Reasons, and then I shall back and enforce those Reasons by many Authorities, and those of the highest sort.

1. Reason. The Parliament gives Law to this Court of the *Kings-Bench*, and to all other Courts of the Kingdom; and therefore it is absurd and preposterous that it should receive Law from it, and be subject to it. The greater is not judged of the less.

2. The

1 Jac. c. 1. The
like words.

2. The Parliament is the immediate Court for Examining the Judgments of the Court of *King's-Bench*, and if they be erroneous, they reverse them; and if this Court should against Law take upon them to proceed in this Cause, and give Judgment, the Parliament, when it Meets, no doubt, will set it aside as Erroneous: And no Man does in the least doubt but they have power to do it, and there is as little doubt but they will do it; therefore it is wholly in vain for this Court to take Cognizance of it; and it cannot be revers'd elsewhere, it being in a matter of Jurisdiction. See the Statute of 27 *Eliz.* c. 8. The Preamble reciting, that Erroneous Judgments given in the *King's-Bench* are only to be reform'd by the *High Court of Parliament*; which Court of Parliament was not in those days so often holden, as in Ancient time it had been: Neither yet in respect of the greater Affairs of the Realm could they well be consider'd of and determin'd in Parliament, &c.

There is an Exception of Errors that concern'd the Jurisdiction of the *King's-Bench*; those remain as before; and in the Errors that are referr'd to the Judges of the Common-Pleas and Barons of the *Exchequer*, by 27 *Eliz.* c. 8. the Jurisdiction of the Parliament is to Examine them, &c.

3. This Court, as all the Courts of Common-Law, Judge only by the ordinary Rules of the Common-Law. But, the proceedings of Parliament are by quite another Rule. The matters in Parliament are to be discuss'd and determin'd by the Custom and Usage of Parliament, and the Course of Parliament; and neither by the Civil, nor the Common-Law, used in other Courts.

4. The Judges of this, and of the other Courts of Common-Law in *Westminster*, are but Assistants and Attendants to the High Court of Parliament: And shall the Assistants judge of their Superiors?

5. The High Court of Parliament is the dernier resort, and this is generally affirm'd and held; but it is not the last, if what they do may yet again be examin'd and controll'd.

6. The Parliament is of an absolute and unlimited power in things Temporal within this Nation.

I shall now proceed to Authorities that are full to this Point, and do second and back those Reasons that I have offer'd; wherein I shall not observe any method by reducing or ranking of them under these Reasons that I have offer'd, because some of the Authorities justify several of these Reasons, all at once.

That the Parliament hath the highest and most sacred Authority of any Court; that it hath an absolute power; that it is the highest Court in the Realm, is acknowledged by our most Learned and gravest Writers, and Historians; for I would not wholly omit them, though I do not need them; but I rely only, and put all the stress of my proofs and arguments upon my Authorities in Law.

Cambden in his *Britannia*, Summam & sacrosanctam Autoritatem habet Parliamentum. *Knighton*, de eventibus Angliæ l. 1. fo. 268 r. col. 1, 2. He calls it the Highest Court of the Realm. So it is call'd in *Treminnard's Case* in *Dier* 60, 61. *Sr. Thomas Smith* in his Com-

Common-Wealth of England l.2. c.2. fo. 50, 51. *In Comitibus Parliamentariis posita est omnis absoluta potestatis vis.*

Sir R. Cotton in his *Posthuma edit.* at Lond. pag. 345. cited by Mr. Pryn in his Preface to Sir Robert Cotton's Abr. The Parliament controlls all Inferior Courts, and all Causes of difficulty; *cum aliqua dubitatio emergit*, referr it to the Parliament.

To shew their power and jurisdiction upon Erroneous proceedings in other Courts, by authorities in Law, which confirms one of my Reasons.

In *Trewinnard's* case, it is said, that though the Parliament erre, it is not reverfible in any other Court: This is spoken in a case where the then occasion was upon a Judgment given, only by the House of Commons, in a case of Priviledge.

Agreeable to this is 21 E. 3. fo. 46. Br. Abr. tit. Error. plac. 65. in the latter end of that case, and 7 H. 6. Br. Abr. tit. Error. plac. 68. by *Cottesmores*, and 1 H. 7. fo. 19. Br. Error. plac. 137. Error in Parliament shall be revers'd in Parliament, & non aliter; for there is not an higher Court. 1 H. 7. fo. 19, 20. By all the Judges in the Exchequer-Chamber for a Judgment in the King's-Bench, Error must be sued in Parliament; and as the Parliament shall correct the Judgments, so they are to correct the Judges that give corrupt and dishonest Judgments. These are the words and the opinions of the Lord chief Justice *Vaghan* in his Reports fo. 139. in *Bushel's* case. Such, says he, in all ages have been complained of to the King in the Star-Chamber, (which is a Court now dissolv'd by Parliament) or to the Parliament. He there mentions many Judges; those 44. that were hang'd in King *Alfred's* time before the Conquest, for corrupt judgments; and those in the time of E. 1. E. 3. and R. 2. for their pernicious resolutions: He vouches the Journals of Parliament, and instances in the Judgment of Ship-money in the last King's time, and the particular Judges impeach'd.

Sir E. C. in his 12 Rep. fol. 64. the words are spoken by Sir E. C. but (as that Rep. says) with the clear consent of all the Judges. *The King hath his Court, that is to say, in the Upper House of Parliament, in which he with his Lords is the Supreme Judge over all other Judges. For if Error be in the Common-Pleas that may be revers'd in the King's-Bench; and if the Court of King's-Bench erre, that may be revers'd in the Upper House of Parliament, by the King with the assent of the Lords.*

Now though this is spoken of the Lords House only, yet it must be again remembred that the Parliament (as I prov'd before) is one entire Body, and that their power in the right of it is entire, though as to the exercise of it, it is distributed into parts, and is divided: Nor can the House of Lords exercise any power as an House of Parliament, or as a Court for Errors, without the House of Commons be in being at the same time. Both Houses must be Prorogu'd together, and Dissolv'd together; like the Twins of *Hippocrates*, they live and die together, and the one cannot be in being, without the other also, at the same time be, in being too.

2. *Inst.* 408. Matters of difficulty were heretofore usually Adjourn'd to Parliament ; but (*says he*) 'tis now disused.

And 2. *Inst.* 599. Courts at variance, properly complain to the Parliament.

Fol. 72. Med.

4. *Inst.* In the Chapter of the Court of the *Kings-Bench*, Errors in the *Kings-Bench*, in matters that concern their Jurisdiction, and other Cases there excepted in the Act of 27 *Eliz.* Cap. 8. cannot be Revers'd but in the High Court of Parliament.

4. *Inst.* Fol. 67. There is a Court Erected by the Statute of 14 E. 3. Cap. 5. Stat. 2. For redress of delays of Judgments in the *Kings great Courts*, consisting of a *Prelate*, Two *Earls*, and Two *Barons*, to be chosen in Parliament by that Statute. If the Case before them be so difficult, that it may not well be determin'd without assent of the Parliament, (it does not say by the House of Lords only) then shall the tenor of the Record be brought by the said Prelate, Earls and Barons, into the next Parliament, and there a final Judgment shall be given.

Si obscurum & difficile sit Judicium, ponantur judicia in respectu usq; magnam curiam. Rot. Parl. 14 E. 3. Num. ult. Sir Jeffery Stanton's Case.

25 E. 3. Cap. 2. The Chapter of Treason in the 2. *Inst.* Fol. 21. The Judge or Court in some Cases, is to forbear going to Judgment till the Cause be shewed before the King and his Parliament, whether it ought to be judged Treason or not.

That this Court proceeds by the ordinary Rules of the Common Law ; but that High Court of Parliament proceeds not by that Law, but by a Law peculiar to that High Court, which is called *Lex & Consuetudo Parliamenti*, and consists in the Customs, Usages, and Course of Parliament ; and therefore, this Court, nor no other inferior Court, can, for this very Reason, judge or determine of what is done in Parliament, or by the Parliament.

If this Court should take upon it to proceed in such cases, it would justly be said of it as a thing very irregular. *Metiri se quemq; suo modulo, ac pede, verum est.*

Sir Rob. Cott. Abr. 20. R. 2. nu. 14, 15.

Sir Tho. Haxey delivered a Bill to the Commons in Parliament, for the honour and profit of the King, and of all the Realm, complaining of the outrageous Expences of the Kings House, and namely of Bishops and Ladies.

Here the *Camb. Dr.* I have before mention'd, would take occasion again to complain of the fauciness of this Bill.

K. R. 2. was offended with the Commons for preferring this Bill to the King ; for it seems they had entertain'd this Information from a particular hand, (as was done in our Case from *Dangerfield*) and they proceeded upon it.

K. R. 2. said it was an offence against his Dignity and Liberty, and said he would be free therein.

And Sir John Bussey, the Speaker to the Parliament (as that Roll of Parliament calls him) is charg'd to declare the Name of him who Exhibited that Bill.

By

By this, it appears the King could not take notice of what was done in the Commons-House, or deliver'd to them, but by the House it self, and that is one of the Laws and Customs of Parliament; and yet, no doubt but it was well known to every Member of that House, and yet it came not to the Kings knowledge.

Nu. 16. The Commons deliver'd to the King the Name of the Exhibiter, which was Sir *Tho. Haxey*.

Nu. 17. The Commons afterwards came, and submitted themselves to the King, and crav'd Pardon, and the King excus'd them.

Nu. 23. Sir *Tho. Haxey* was adjudg'd by Parliament to die as a Traitor. The King was offended, the Commons forsook the Exhibiter, and submitted, and the Lords adjudge him guilty of Treason. This seems to be a strong Case against the Liberty and the Privilege of the House of Commons, (but it seems strange how it should be made Treason;) but it is stranger; especially, if it be suppos'd this Sir *Tho. Haxey* was a Member of the House, one would have thought he should have been under a protection and special privilege. But I take him to be no Member, for he is afterwards call'd Sir *Tho. Haxey*, Clerk; and Graduates in the University, and those in Orders, were usually dignified with the addition of Sir; and it is not yet quite out of use in the University.

I find by Mr. *Pryn*, in his Plea for the Lords, *Fol. 345.* that in the next Kings Reign, *H. 4.* the Commons exhibited a Petition on the behalf of Sir *Tho. Haxey*, (for he was not Executed, the Archbishop of *Canterbury* took him into his Protection, being a Clergy-man;) and the Commons in their Petition affirm, that the Judgment against Sir *Tho. Haxey*, for delivering in this Bill to the Commons in Parliament, was against *Right*, and the *Course* that had been used before in *Parliament*, in destruction of the *Customs* of the Commons.

Here note, That the *Right* and *Course* of *Parliament*, and the *Customs* of the *Commons*, are mention'd as *Synonymies*. *Mr. Pryn. ibid.*
388.

Upon this Petition of the Commons, the Judgment is adjudg'd to be null and void.

But this could be adjudg'd no where but in Parliament, for it concern'd the *Right* and *Privilege*, and the *Customs* and *Course* of the Parliament.

1 H. 4. Nu. 91. In Sir *Rob. Cott. Abr.* the Record says, Sir *Tho. Haxey*, Clerk, Pardon'd, and the Judgment revers'd, and he restor'd to all.

This Case, in very many Circumstances, suits with the Case of *Dangerfield*, and in many, with our present Case. Ours is in the Case of an Heir apparent or presumptive. But a greater than the Heir is here, in this Case of Sir *Tho. Haxey*, namely, the then King himself.

But I cite it, principally to prove one of my Reasons and Arguments to the third point, namely, that there are *Rights* and *Customs* that are peculiar to the High Court of Parliament; and

that there is a Law called the *Course* of Parliaments, and it may be observ'd, that the Customs of the Commons are the Law and Course of Parliament.

Concurring with one observation that I made out of this Case, that one of the Laws or Customs of Parliament, is, That no Member is to publish at the Court, or elsewhere abroad, what is done in the House of Commons, but it ought to proceed from the House it self, and no other, (which is another Argument, to prove that no other inferior Court can enquire into, or hear or determine of their doings) for no notice can be taken of what they do, unless it come by their own Relation and Discovery.

That, I say, which concurs with this, is another Roll of Parliament of that noble King *H. 4. viz. 2 H. 4. Nu. 11.* The Commons require, that is, request the King, that he would not give an ear to any untrue reports of the Commons-House, until the time might try the same; and that time is when the Commons apply to the King in it, and not before. *Whereunto the King granted*; which allows it to be the Law and Course of the Parliament.

4. *Inst. Fol. 15.* Every Court of Justice (says Sir E. C.) hath Rules and Customs for its direction. So the High Court of Parliament, *de suis propriis legibus & consuetudinibus consistit.*

Again, Sir E. C. in his select Cases, Printed 1677. *Fol. 63.*

Note (says he) the Privilege, Order, or Custom of Parliament, either of the Upper House, or of the House of Commons, belongs to the determination only of the Court of Parliament.

And there he cites two Precedents for it.

The First that of 27 *H. 6.* in the Controversy between the Earls of *Arundel* and *Devonshire*, for Precedency: The King, by advice of the Lords, referr'd it to the Judges to examine and to report; not finally to determine as Judges of the Case, but as Assistants to the Lords.

The Judges answer'd, That it *was a matter of Parliament*, and belong'd to the King and the Lords to determine.

One would think this were a strange answer of the Judges, to deny their advice; Were they not Assistants to the Lords in matters of Law?

The true reason of their declining to give their Advice, is, It was a Case above them, and not to be determined by the ordinary Rules of Law, and therefore out of their element. *Quæ supra nos, nihil ad nos.* Therefore their answer was, That it was a matter of Parliament, and belong'd to the King and Lords, but not to the Judges.

*A Resolve of all
the Judges in
the point.*

This is a Resolution of all the Judges in the very point; though this particular Case concern'd only the Lords, being a matter of precedence between Two Lords; yet, as I have prov'd, the Parliament is one entire Body, and are mutually concerned in their powers and privileges.

*Sir Rob. Cott.
Abr. pag. 651.*

The other Case mentioned by Sir E. C. is that of *Tho. Thorp*, the Speaker of the Commons, 31 *H. 6.* taken in execution at the suit of the Duke of *Tork*, during the recess of the Parliament.

We

We have it at large in the Parliament Roll of 31 H. 6. nu. 25, 26, 27, 28.

The Commons, at the opening of the next Session of Parliament, request the King and Lords, to restore their Speaker to them.

The Judges being demanded of their Counsel therein ; (Note, it was nothing but their Advice ask'd.) It was after mature deliberation, they answered, *It was not their part to judge of the Parliament, which may judge of the Law.* Note, the reason to judge of the Law, signifies they are the Supream Court to judge what is Law, and what is not. And to judge of the Law, likewise signifies, that they can judge whether a Law be good or not ; in order to Approve of it, and to Enact it, or to Repeal a Law.

Mr. Pryn, in his Plea for the Lords, calls this a famous, memorable Case, and says he was then Ch. Baron.

This is in a Case that concern'd the privilege of the Commons and their Speaker ; and yet they say, that judging in this Case were to judge of the Parliament : This intimates too, that the Parliament judges by other Rules than those of the Common-Law. And 'tis the Common-Law is the proper Element of the Judges of the Courts of *Westminster-Hall*.

This is a second Resolution of all the Judges in the very point.

Mr. Hakewel, in his *Treatise of the manner of Enacting Laws in Parliament*, Fol. 125. reports this *Case of Thorp* at large.

A second Resolution of all the Judges in the point.

It is time now to come to higher Authorities, that is, to Resolutions of *Parliament* in this point.

And first, the Resolution of the House of Commons in maintenance of their own Right, or at least a claim of their Right ; I have it out of an Author that is very far from being a friend to the House of Commons ; and 'tis a *Clergy-man* too. I mean Dr. Heylin, in the Life of Archbishop Laud, Fol. 89. He reports, that the House of Commons made a Protestation in 1621. against all Impeachments, other than in the House, for any thing there said or done.

A Protestation of the Commons against Impeachments, other than in the House, &c.

Let me present you with the like claim made by the Lords, which seems to run something in the form of an old Act of Parliament.

The like Claim of the Lords, and confirm'd by Act.

In Sir Rob. Cott. Abr. 11 R. 2. nu. 7. In that Parliament, all the Lords, as well Spiritual as Temporal ; being present, claimed their Liberties and Franchises ; viz. That all weighty matters in the same Parliament, which should be afterwards moved, touching the Peers of the Land, ought to be determin'd, judged, and discussed by the Course of the Parliament, and not by the Civil Law ; nor yet by the common Laws of the Land, used in other more Courts of the Realm.

The which Claim and Liberties the King most willingly allow'd and granted thereto in full Parliament says that Roll.

Now, as I have before prov'd, the Liberties and Franchises of the Parliament, in the right of them, are entire, and due to both Houses, for both make up the Parliament.

Mr. Seld. in his *Title of Honour*, Fol. says, That a thing granted in full Parliament, signifies an Act of Parliament.

Now

An Act of Par-
liament in the
point.

Now for an Act of Parliament full in the point, and then I can go no higher.

Pryn's Plea for
the Lords, fol.
401 at large.

It was in the Case of *Richard Strode*, one of the Burgeſſes for *Plympton* in *Devonſhire*, in the Parliament of 4 H. 8. for agreeing with the Commons Houſe, in putting out Bills (as it is reported there) which ſeems to reſemble the *Printing or Publiſhing*, mention'd in our Caſe. Thoſe Bills ſo put out were againſt the Abuses of the Tinnerſ, who were a great and numerous Body of men ; who by theſe Bills took themſelves to be ſcandalized and ſlandered.

After the Parliament was riſen, this *Richard Strode* for what he had ſo done in Parliament, was preſented and found guilty in the *Stannary-Courts*, and condemn'd to forfeit 40. l. (a moderate fine.) He was for this imprifon'd in a Dungeon, within a Caſtle, and fed with Bread and Water.

When the Parliament met again, he Petition'd the Parliament for remedy, and that the *Judgments* had againſt him and the *Executions* might be made void ; which was done accordingly by Act of Parliament.

And it was further Enacted, That all Suits, Accuſations, Condemnations, Executions, Fines, Amerciaments, Punishments, paſſ'd or had, or thereafter to be paſſ'd or had, upon the ſaid *Strode*, and to every other perſon, that was in that Parliament (thus far it is a private and particular Act) but the reaſon of this, and the Juſtice of it extends to all like Caſes ; but then it goes farther, Or that of any Parliament hereafter ſhall be ; for any Bill, ſpeaking, reaſoning, or declaring of any matter concerning the Parliament, to be communed or treated of (theſe are very large and general words) be utterly void, and of none effect. And it goes farther yet, And that any perſon vexed or, troubled, or otherwiſe charged for any Cauſe, as aforeſaid ; ſhall have an Action of the Caſe, againſt every perſon ſo vexing contrary to this Ordinance, and recover treble damages and coſts.

Memorials of
the Engliſh
Affairs, fol. 12.

Here now is an Action given againſt one, for what they ſhall do in a courſe of Juſtice. But it is becauſe it is ſuing in an inferior Court that has no juriſdiction in the matter. This Act takes away all juriſdiction in ſuch Parliament Caſes, from all other Courts. I know that in the Caſe of *Denzill Hollis* (afterwards the Lord *Hollis*) Mr. *Seld.* and others, 3 Car. 1. the Judges being conſulted upon ſome Queſtions propounded, Reſ. That that Act of *Strode's*, was a particular Act, and extended to *Strode* only ; and no doubt it was a particular Act in a great part of it, and in that part extended to *Strode* only.

But if the Judges meant that no part of that Act was a general Law, then I muſt crave leave to ſay, 1. That their opinion was extrajudicial ; it was delivered upon their being conſulted with about Queſtions propounded to them, and therefore hath not that weight. And I muſt take the liberty to appeal to the very words of the Statute it ſelf, and to any man of reaſon, and honeſty, to uſe his reaſon aright, that ſhall read them ; and I muſt offer ſome reaſons againſt their opinion, and cite ſome good Authority in that point, and then leave it to this Court to judge of it.

The

The words, and persons, and time mention'd in the latter part of that Act, are general.

It speaks indeed, first of *Strode* in particular ; but then it hath these words (every other person.)

It mentions that Parliament in particular ; but then it proceeds to speak of (any Parliament that there-after shall be) Then the things also are general that the Act extends to, not onely to indemnifie *Strode*, for what he had said, or done in parliament ; but then the Indemnity extends to every other person, *for any Bill, Speaking, Reasoning, or Declaring of any matter concerning the Parliament.*

The words of the Royal Assent to this Bill, are such as are constantly used, only to general Acts, *viz. Le Roy vent* ; whereas to a particular Act, the Royal Answer is, *Soit droit fait al parties.*

And this Act of 4 *H. 8.* is enrolled as general Acts use to be. But a private or particular Act is always fil'd, but never enroll'd ; for this latter distinction we shall find it in the Case 33 *H. 6.* fol. 17, 18. for authority in this question, Sir *E. C.* in his 4th. *Instit.* fol. 19. holds this Act of 4 *H. 8.* in the latter part of it to be a general Act.

It is indeed commonly said *Boni Judicis est ampliare jurisdictionem.* But I take that to be better advice which was given by the Lord Chancellor, (Sir *Francis Bacon*,) to Mr. Justice *Hutton*, upon the swearing him one of the Judges of the Court of Common-Pleas ; That he would take care to contain the jurisdiction of the Court within the ancient *Mere-Stones* without removing the Mark.

I find but one Resolution in all our Books, that I can meet with, that seems to make against us in this point, and maintains a jurisdiction in this Court, for a Misdemeanor, or Conspiracy suppos'd to be done by some particular Members of the House of Commons, in the House in time of Parliament. It is reported by Mr. Justice *Croke* in his Reports of the time of King *Charles*, fol. 181. but it is more fully reported in a late Book, entitled Memorials of the English Affairs, set out by a Learned Lawyer, and the Son of a Judge ; and it is the Case that I lightly touch'd upon but now, that of Mr. *Hollis*, *Selden*, &c.

The offence charg'd upon Mr. *Denzill Hollis* (who was afterwards the Lord *Hollis*,) Mr. *Selden*, Sir *John Elliot*, Sir *John Hobart* and divers other Parliament-men, was for a force used upon the then Speaker, Sir *John Finch* (afterwards Lord Keeper) in keeping him in the Speaker's Chair against his will, when he would have left it ; and pressing him to put a question, which the King had forbidden him to put.

For this supposed offence, after the Parliament was Dissolv'd, these Parliament-men were first convened before the Council, where they refus'd to answer the Charge, it being for matters done in Parliament.

Then the Judges had Questions propounded to them, to which they gave their resolutions, *that for things done*, not in a Parliamentary way, a Parliament-man may be punished after the Parliament

is ended, if he be not punished in Parliament; otherwise as J. Croke, said, *There would be a failure of Justice*, but; that regularly *he cannot be compell'd out of Parliament to answer things done in a Parliament in a Parliamentary course.*

This Answer seems to be very oracular, for it resolves that a Parliament-man shall not Answer for things done in Parliament in a Parliamentary course. If it be done in a Parliamentary course, what occasion can there be to answer for it? But who shall judge what is a Parliamentary course, but a Parliament? not Judges of the Common-Law; for the Parliamentary course differs from the Rules of the Common-Law.

But they refusing to answer at the Council-Board, were committed close Prisoners to the Tower.

After this Sir Robert Heath, the King's Attorney, preferr'd an Information in the *Star-Chamber* against them, that was not proceeded in. The Lord Keeper was under difficulties about it, says, the Author. The Judges of the *King's-Bench* were to consult with the rest of the Judges in granting a *Habeas Corpus* for bailing the Prisoners. The rest of the Judges would hear arguments, so it was put off, and delay'd, (as our Author reports it.) At last an Information was exhibited against them in the *King's-Bench*. The Defendants pleaded to the jurisdiction of the Court; their plea was over-rul'd, and they refusing to plead over, judgment was entred by *nihil dicit*, and they fined and imprison'd.

The Resolution of the Commons in Trewin-nard's Case is called the Judgment of the most high Court of Parliament. If it had been clear that the King's-Bench could have punished it, they would have begun with it there, but they try'd the Council and the Star-Chamber first.

Mr. J. Croke, at the latter end of those Reports gives this further account of that Case, that afterwards in the Parliament 17 Car. 1. It was *Resolv'd by the House of Commons*, that those Parliament-men should have a recompence for their damages sustain'd for the services to the Commonwealth in the Parliament, 3 Car. 1. If a Judge hath thought fit to report this, it may be as fit for me to mention it. I take that to be the first precedent or resolution given in any case for what was done in Parliament, and it stands alone; I have heard of none since that neither. It seems to be directly against the provision made by it; it is clearly within the Equity and Reason of it, *Strode's Act*. I wish I could not say that even those times of 3 Car. 1. were not full of trouble. It appears much by the *difficulty the Judges seem'd* to be at in the proceedings of that Case; this detracts much from that veneration, that otherwise is justly due to a Resolution so solemn as that of all the Judges.

The Lord Chancellor Bacon in his profound Book of the Advancement of Learning, dislikes all Precedents that *taste of the times*; and advises that Precedents should be deriv'd from good and moderate Times.

The only reason that I find given for that proceeding in the case of *Denzill Hollis*, is that given by Mr. J. Croke, viz. *That otherwise there would be a failure of Justice.*

This reason must be grounded either upon the *Infrequency* of Parliaments, or upon an opinion that *Parliaments will be partial* in cases of their own Members.

As

As to the first of these (the long intervals between Parliaments,) This under favour ought to be no reason, especially to come from a Judges's mouth, (I have a great honour for the memory of that Reverend Judge) who must needs know, and ought to assert it, That by the Law, Parliaments ought to be very frequent, and Judges ought to take part with the Law, and to maintain it.

Before the Conquest (as 'tis untruly call'd) by the Law, Parliaments were to be held twice a year, as appears by King *Edgar's* Laws, c. 5. in *Lamb. de priscis. &c.*

And the Mirror of Justice c. 1. Sect. 3. tells us that King *Alfred* ordain'd for a perpetual Usage; that twice in the year, (and if need were) oftner. The Seniors or Earls should assemble themselves at *London*, to speak their minds.

And 'tis reckon'd among the *Abusions* (as they are there term'd) of the *Common-Law*; That whereas Parliaments ought to be twice in the year for the salvation of the Souls of Trepassers (and at *London* too) that they are there but very seldom, and at the pleasure of the King, for Subsidies and Collections of treasure.

And by the Statute of 4 *E. 3. c. 14.* Parliaments ought to be once a year, and oftner (if need be) I have heard a Civilian in the House of Commons give this construction to that short Act, that the words (If need be) should referr to the Parliaments being (once a year) aswell as to the words (and oftner) and I never heard that any man was of that opinion but himself; but I remember he himself laught when he spoke it, but he was more laught at for that ridiculous exposition. And should that sense be put upon it, it would make the Law a very ridiculous thing indeed, for then the short of it would be this; *That we should have a Parliament when there is need.*

But to refute that fancy, there is another Statute of the same King's time, namely, 36 *E. 3. c. 10.* which says, that for redress of divers mischiefs and grievances, which daily happen, its accorded that a Parliament shall be holden every year without any such restriction (If need be.)

And by the Act of 16 *Car. 2. c. 1.* These Acts are declared to be in force. And farther, it is Declared and Enacted, That the holding of Parliaments shall not be discontinued above three years at the most.

Now how can any man say in Defiance of these Laws; That there can be any long discontinuance of Parliaments? His now Majesty has been pleased graciously to declare his Resolution often to meet his People in Parliaments, and in the word of a King there is power. Nay, we have the King's Oath for it, for he is sworn to observe the Law; And *eadem præsumentur esse mens Regis qua legis*; And it is an high presumption for any man to think, or say otherwise.

For that other ground of that reason given by Mr. Justice *Croke*, viz. That there would be a failure of Justice, if offences committed in Parliament, were not punishable in the *Kings-Bench*.

*King Charles
the Second.*

Bench ; namely, because Parliaments will be partial in Cases of their own Members. This carries with it a very high reflection upon that great and solemn Assembly, to entertain a thought so mean, and so dishonourable of the Supreme Court of the Nation, that the Court which is to Correct the Errors of all other Courts, and is the last resort of the Nation, that they should be guilty of Injustice and Partiality.

No Man that is a lover of his Country, or a friend to his own true and honest Interest, will harbour a dishonourable thought of that great Assembly.

I am apter to think, that the reporter of that Case did mistake, when he charg'd that worthy and reverend Judge, Mr. Just. Croke, with the offering of that for a Reason.

I find the most Reverend of our Judges speaking with the greatest Reverence of that Supreme Court.

Besides, the Learned Lord Chief Justice Sir *Edm. Coke*, who often expresses his great veneration for them,

Hear what the Ch. Just. *Brook*, and Just. *Saunders*, say of that Assembly in *Plowd. Comment.* in the Case of *Hill and Grange*, *Fo. 175. a.* towards the lower end of that *Folio*, *Injustice* (say they) *may not be presum'd of a Parliament.* And in the Earl of *Leicester's* Case, in the same Comment, *Fol. 398.* towards the end of the *Folio*, *The Parliament is a Court of very high Honour and Justice, of which no man ought to imagine a thing dishonourable.*

I do agree, that an offence committed in Parliament, is a very high offence ; but the higher it is, the more proper it is for their Judicature ; and that Court is arm'd with a power to punish the highest offences, and the highest offenders.

But to take it out of their hands, and to make it determinable in any other Court, is a disparagement to that Grave and Supreme Court.

We easily agree that a Parliament may Erre, for they are not Infallible ; but the Law hath provided a Remedy against those Errors, and a way to Reform them. A subsequent Parliament may Reform the Errors of a preceding Parliament, as I have prov'd by several Authorities.

But to say they will be partial or unjust, or corrupt, or do any thing out of malice, is to raise a scandal upon the whole Nation, whose Representative they are.

I will make no difficulty to affirm, That if any offence whatever be committed in the Parliament, by any particular Members, (as this was accounted a Force or Riot in the Case of *Denzill Hollis* and *Selden*, and others committed upon the Speaker) it is an high infringement of the right and privilege of Parliament, for any Person or Court to take the least notice of it, till the House it self either has punish'd the Offender, or referr'd them to a due or proper course of punishment. To do otherwise, would be to make the highest Court an Offender, and to charge them with Injustice.

Nay,

Nay, their right and privilege so far extends, that not only what is done in the very House sitting the Parliament, but whatever is done relating to them, or in pursuance of their Order, during the Parliament, and sitting the Parliament, is no where else to be punish'd, but by themselves or a succeeding Parliament, although done out of the House, as in the case of *Ferrers*.

If any shall imagine, as Mr. *Pryn* does, and others, that of later times the Parliament have encroach'd more power than anciently belong'd to them, I have already answer'd this objection, by shewing how large a power they exercis'd of old, and see what is further mentioned in *Lamb. Archion* 57. viz. That King *H. 3.* was told by his Lords Spiritual and Temporal, that of ancient time the Creating and Deposing of all the Judges and great Officers belong'd to the Parliament.

I do not deny, but some sort of Orders by them made, are no longer in force than while the Parliament sits; but then, what is done after the Parliament is risen, is not to be said to be done by their Order, for then it ceases to be their Order: This must be understood of matters Executory, not as to things executed by their Order during Parliament.

However, this Case of *Denzill Hollis* comes not home to our present Case, but 'tis wonderfully short of it: This was an Offence charg'd only upon some Particular Members; and it cannot be denied, but particular persons, even in the Parliament, may misdemean themselves, and they are to be punish'd by the Parliament, but no where else.

But in our Case, that which makes the Offence, and for which the Information is brought by the Kings Attorney, is what is done by the whole House of Commons, and by virtue of their expresse Order. Although, as I have already observ'd, the Information it self does not expressly own it, yet the demurrer to the Defendant's Plea (which sets it all forth) does most plainly avow it, And this I am sure is without any colour of precedent, and never was attempted till this time.

If any Man will extenuate or justify this way of proceeding, by saying, that this was not for any thing done in the House, but a matter done out of the House; viz. the Printing and Publishing was abroad in the Printing-House, and in the Streets, and spreading them abroad throughout the Kingdom: Yet this will not salve it, for the Defendant did what he did as Speaker, and not in his private Capacity. And it was done by order of the whole House and sitting the Parliament; so that this Information does directly question the Parliament it self, and Arraigns their power and actings; for I have fully prov'd, that what the Defendant has done, is not his Act, but indeed the Acting of the whole House of Commons. And I have also prov'd, that the Two Houses, as to the right of the power that they claim, and use, is but one, and they are intire, though they may divide in the exercise of that power. So that it is a matter of the highest concernment to the Nation that possibly can be.

R

Sir,

Fol. 15.

Sir E. C. in his Fourth *Inst.* in his Chapter of the High Court of Parliament, mentions Two Cases only, and some other beginnings of a Prosecution against such as absented themselves from Parliament, and departed from it without Licence; but they had no effect, as he affirms, but only against Six timorous Burgeffes, (where Thirty nine Members were inform'd against) who *ad redimendam vexationem*, submitted to Fines; but he could not find that ever they paid any.

The first of the Two Cases is that of the Bishop of *Winchester*, it is in the Year-Book of 3 E. 3. Fol. 18, and 19. *Fitz. H. Abr. tit. Coron. plac. 161.*

And he affirms that those are all the Cases that he can find concerning this matter.

The suit against the Bishop was by original Writ in the *Kings-Bench*, and it charges him with a Trespass and Contempt in departing from the Parliament without the Kings Licence.

The Bishop there pleads (as the Defendant does in this Case) to the jurisdiction of the Court. *Et dicit quod si quis eorum* (speaking of the Lords of Parliament,) *deliquerit erga Dominum Regem in Parlamento aliquo, in parlamento debet corrigi & emendari, & non alibi in minori curia quam in Parlamento. Unde non intendit quod Dominus Rex velit in curia hic de hujusmodi transgressionem & contemptu factis in Parlamento responderi.*

Note the Plea, as to the offence, is very general, not only restrain'd to the offence of absenting from the Parliament, but to any trespass or offence in Parliament. *Si quis deliquerit.*

And it would be a little improper to call absence from Parliament offence committed in Parliament, for it looks like the quite contrary: But in a just sense, any offence committed by a Member relating to the Parliament, though done out of the House, is termed an Offence in Parliament. So Printing any thing by Order of Parliament, though it be done and executed in another place, yet it may be said to be done by the Parliament, and in Parliament, if it be by their Order, and in time of Parliament.

We may note further that this is a prosecution only against one particular Person, for a particular Offence and Contempt charg'd upon him. But in our Case, the prosecution is against the very Speaker of the Parliament, and is in effect a prosecution against the Parliament; for it is against him, for what he did by command and order of Parliament, and sitting the Parliament.

And though the Attorney-General, reply'd to the Bishops Plea that the King might sue in what Court he would, yet the Bishop rejoins upon him and maintains his former Plea, and there it rests; so that as Sir E. C. observes that the Bishops Plea did stand and was never over-rul'd, agreeable to the resolutions of former times. So this *J.* may claim as an authority on our side.

4 *Inst. fol. 17.*

And though Mr. *Plowden* the Lawyer, to the like Information put in against him and others, 1 and 2 *Philip and Mary*,
And

pleaded that he remain'd continually from the beginning to the end of the Parliament, and travers'd the absence whereby he passes by the advantage of the Plea to the jurisdiction, yet this is no Authority against us, for he might think fit, *Renunciare juri pro se introducto*, having so true an occasions of clearing himself from that scandalous imputation of being absent from doing his duty in Parliament, which certainly is a very high breach of Trust; and he might be impatient of lying under it, and therefore thought it best to traverse it to clear his Reputation in that point; yet I must confess I should never have advis'd it, nor was there any further prosecution against him.

I will mention but one most excellent Record more, and it is a Record out of the Parliament Rolls, 27 E. 3. Num. 9. Sir Robert Cotton's Abridgem. and with that I will Conclude. I take it to be very pertinent, and I am sure it is very seasonable.

Among the Petitions of the Commons, One is;

They pray the King, that he will require the Archbishop, and all other of the Clergy, to Pray for the Peace and good Government of the Land.

And for the King's good will towards the Commons.

The King's Answer, is,

The same prayeth the King.

And I wish with all my heart, it were the Common-Prayer.

I have but one Prayer more to make, and that is, That this Court will allow the Defendant's Plea.

On the 1st of June 1861
I received from you a letter
of the 28th inst. in relation
to the matter of the
land in the State of
Ohio. I have been
very busy since that
time, and have not
had time to write you
before. I am now
in the city of
Cincinnati, and
will be in the city
of Columbus, Ohio,
on the 10th inst.

A
DISCOURSE

Concerning the
Ecclesiastical Jurisdiction

IN THE
Realm of England:

Occasioned by the Late

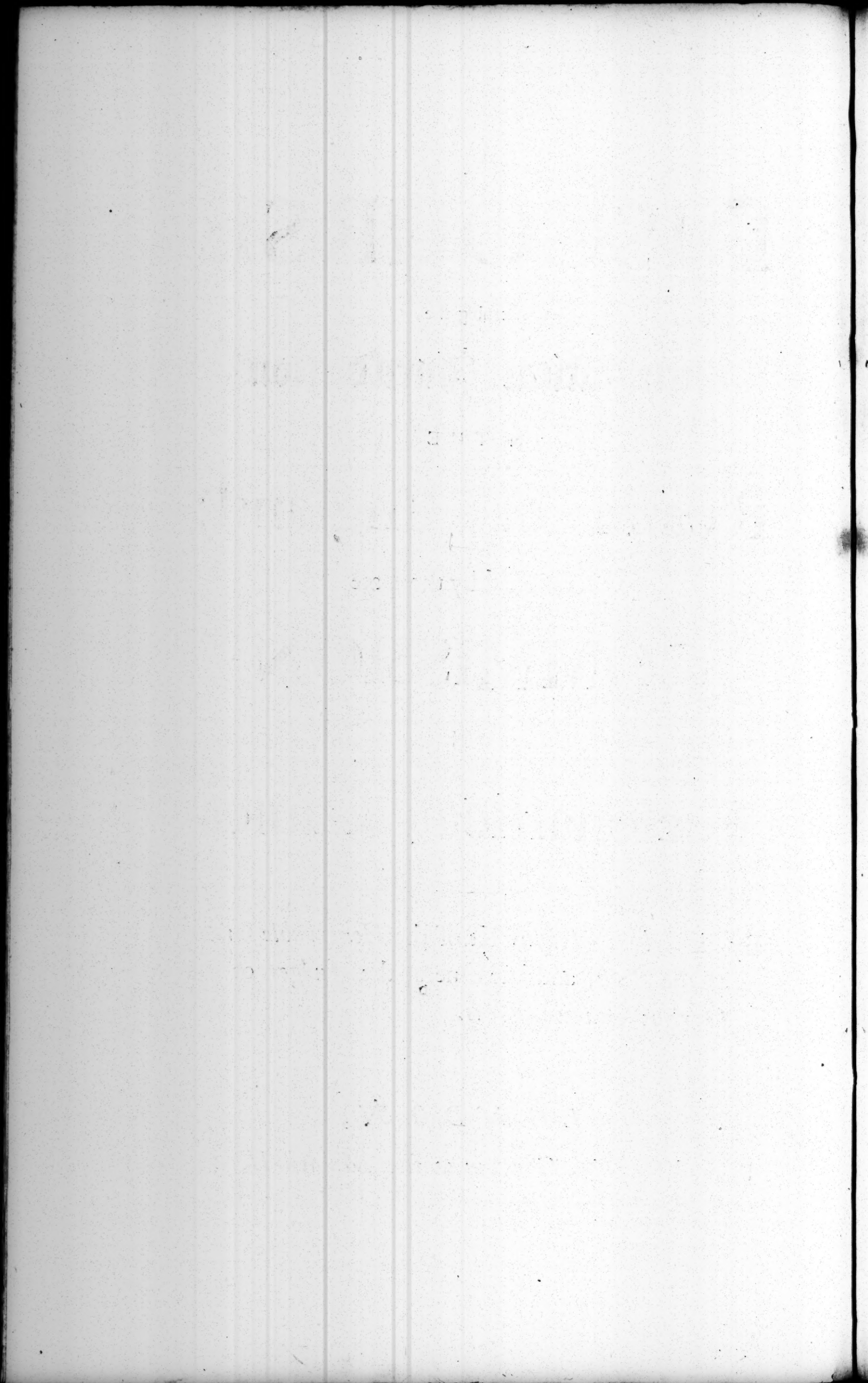
COMMISSION

IN
Ecclesiastical Causes.

By Sir Robert *Atkyns* Kt. of the *Honourable Order*
of the *Bath*, and late One of the *Judges* of the
Court of Common-Pleas.

L O N D O N,

Printed for *Tim. Goodwin* at the *Maiden-Head* a-
gainst *St. Dunstons Church* in *Fleet-street*, MDCLXXXIX.



(67)

A

DISCOURSE

Concerning the

Ecclesiastical Jurisdiction

IN THE

Realm of England:

Occasioned by the Late

COMMISSION

IN

Ecclesiastical Causes,

THE Preamble acknowledges, That the King justly 26 H.8. c. 1. and rightfully is, and ought to be, Supream Head of the Church of *England*, and is so recognised by the Clergy in their Convocations. And it is Enacted, That the King and his Successors shall be taken, &c. the only Supream Head in Earth of the Church of *England*. And shall have and enjoy annexed to the Imperial Crown all Jurisdiction, &c. Authorities, &c. to the said Dignity of Supream Head of the same Church belonging. And that the King and his Heirs and Successors, Kings of this Realm, shall have full Power and Authority from time to time to visit, repress, redress, reform, order, correct, restrain and amend all such Errors, Heresies, Abuses, Offences, Contempts and Enormities whatsoever they be, which by any manner of Spiritual Authority or Jurisdiction ought, or may, lawfully be reformed;

ed, repressed, ordered, redressed, &c. Any Usage, Custom, foreign Laws, foreign Authority, Prescription or any thing to the contrary notwithstanding.

Note, This Act doth not make the King to be the Supream Head of the Church of *England*, but acknowledges, that he ever hath been so (as it is recited by the Statute made in the same Parliament of 26 H. 8. c. 3. the Act for the First-Fruits. See the Preamble towards the latter Part, being the first Paragraph.) See also the Oath prescribed by the Statute of 35 H. 8. cap. 1. for the Succession, Paragraph the 11th in Mr. Keeble's Edition of the *Statutes* at large, very full to this purpose, to shew that the Act of 26 H. 8. cap. 1. gave the King no new Title, but only acknowledged, that he ever had a Right to it, and that the Bishop of *Rome* had but usurped it.

* Sir Hen. Hobart's Reports f. 63. It is said by the Judges of the Common-Pleas, That the Power of Justice is in the King as Sovereign originally, but afterwards settled in several

Courts, as the Light being first made by God, was after settled in the great Bodies of the Sun and Moon.

And Sir E. Coke 4. Inst. f. 70. in the Chapter of the Court of Kings-Bench, to the same effect.

* See the Original of Bishops Courts and Jurisdictions severed from the Hundred Court distinct from Provincial and National Synods, and that there were then Ecclesiastical Laws, the Character of K. William the 1st. to Remigius then Bishop of Linc. Mr. Selden's Notes ad Badmerum f. 167.

And as the Act of 26 H. 8. cap. 1. gave the King no new Title, so it gave him no new, nor further Authority in Spiritual and Ecclesiastical things, nor over Spiritual and Ecclesiastical Persons, than what he had before.

Therefore it is to be enquir'd what Jurisdiction or Authority the King had before the making of that Act, and how the Ecclesiastical Jurisdiction was of right and duly before exercis'd and administr'd. viz. in what Courts, by what Rules, Laws or Canons, and by what Persons.

It is clear in Law, that the King himself merely in his own Royal Person could never take to himself the Hearing of any Cause Ecclesiastical or Temporal, and adjudg and determine the Cause himself: For by the Law and Constitution of the Realm, the King hath committed all his Power Judicial to divers * Courts, some in one Court, some in another, as is held in Sir Ed. Cokes 2d. Institutes fol. 186. at the lower end of that folio, and in the middle of fol. 187. All Matters of Judicature and Proceedings in Law are distributed to the Courts of Justice, and the King doth judg by his Justices. See the Reports that pass by the Name of Sir Ed. Cokes 12th. Reports, fol. 63. the Case of *Prohibitions*: Which is true as to * Ecclesiastical Causes as well as Temporal; for every Man knows, that there have been from the first Constitution of the Kingdom certain Courts and Jurisdictions erected within this Realm for deciding and determining of Spiritual and Ecclesiastical Causes. *Selden's History of Tithes*, fol. 412.

All this is excellently well set forth by the Preamble of the Statute of 24 H. 8. cap. 12. concerning *Appeals*. That as the King hath ever been the Supream Head of the Realm (which Word *Head* is by way of *Metaphor*, and must have relation to some (*Body*;) therefore

therefore the Statute in the Preamble proceeds to tell you, what the Body is to which the Head relates, *viz.* The Body Politick of the Realm consists of all sorts and degrees of People (within this Realm) divided by Names of *Spirituality* and *Temporality*. The Statute proceeds to mention the plenary Power, Authority and Jurisdiction the King hath within this Realm in all Causes. It shews us how that Power is distributed, and by whom to be exercised. Not by the King in Person, nor at his Will and Pleasure in any arbitrary Way; but as that Preamble further instructs us, * The Body Spiritual hath Power in all Causes Divine and Spiritual to determine and to administer all such Offices and Duties as to their rooms Spiritual doth appertain; the like is declared as to Temporal Causes to be in the other Part of the said Body Politick, call'd the *Temporality*. And both their Authorities and Jurisdictions do concur in the due Administration of Justice, the one to help the other.

* Sir Ed. Coker
5. Rep. The
Case of the
Kings Ecclesi-
astical Law, f.
40.

The Preamble of this *Stat. of 24 H. 8. c. 12.* of Appeals further shews, how that this Ecclesiastical and Spiritual Jurisdiction, had been confirmed and defended by several antient Acts of Parliament against the Usurpations of the Bishop of Rome (and that long before the Reformation of Religion.) Then comes the Enacting Part, which does Ordain, That all Causes determinable by any Spiritual Jurisdiction, whether they concern the King himself (as the Case of the King's Divorce) or any of the Subjects, shall be heard, examined, discussed, clearly, finally and definitively adjudged and determined, within the Kings Jurisdiction and Authority, and not elsewhere *in such* * Courts Spiritual and Temporal of the same, as the nature of the Cases shall require.

* Not by extraordinary
Commissions
at the first in-
stance, but on-
ly gradually
upon Appeals
Sir John Davies
Reports fol.
91. the Case
of Premunire
4. Inst. 339.
of Appeals.

Then the same Statute shews us in what Courts, and by what Steps and Method, Suits and Proceedings concerning Spiritual and Ecclesiastical Matters ought to be handled, See Paragraph 5, 6, 7, 8, 9, 10. It begins with the Arch-Deacon's Court, which is *infini gradus*, and proceeds gradually from the Arch-Deacon to the *Diocesan*, from him to the *Metropolitan*, and at last it mentions the *Convocation*, as the Supreme.

Note, That further Appeals have been given by several Acts of Parliament, as by 25 H. 8. c. 19. from the Arch-Bishop or Metropolitan to the King in *Chancery*, which is by Commission of *Delegates*, &c. And it hath been Resolved, That though the Acts of 24 H. 8. cap. 12. and of 25 H. 8. cap. 19. do upon certain Appeals, make the Sentence definitive as to any further Appeal, yet the King (as *Supream Head*) may grant a Commission of Review: See the Case of *Halliwel* against *Jervois*, Sir Francis Moores Reports, fol. 462. and in the same Reports, fol. 782. in the Case of *Bird* against *Smish*, and in Sir Edw. Cokes 4th. Institutes, fol. 341.

T

And

And as the Kings Ecclesiastical Power and Jurisdiction are by the Fundamental Laws of the Realm distributed into several Courts, which are mentioned and confirmed by the said several Acts of Parliament, and may not therefore be exercised by any other, but by such Courts, and in such Method and Manner as by Law, and the said Acts of Parliament it is provided: So also those Courts cannot proceed *Arbitrarily*, but by the known and settled Ecclesiastical Laws, Constitutions and Canons that are in force.

By the Act of 1. Eliz. cap. 1. Entituled, *An Act for restoring to the Crown the Antient Jurisdiction over the Estate Ecclesiastical and Spiritual, &c.* the seventeenth Paragraph in Keeble's Book of Statutes, It is Enacted, That such Jurisdctions, &c. Spiritual and Ecclesiastical, as by any Spiritual or Ecclesiastical Power or Authority hath heretofore been, or may lawfully be, exercised or used for the Visitation of the Ecclesiastical State and Persons, and for Reformation, Order and Correction of the same, and of all manner of Errors, &c. Abuses, Offences, Contempts and Enormities shall for ever by Authority of this Present Parliament be united to the Crown.

This Statute was the ground for Commissions to hear and determine Spiritual Causes *ad primam Instantiam*.

By the 18th. Paragraph of that Act the Queen and her Successors have Power by virtue of this Act, by Letters Patents under the Great Seal, to assign, &c. (as often as they shall think meet and for such time) such Person or Persons, as the Queen, &c. shall think meet to exercise all manner of Jurisdctions Ecclesiastical or Spiritual; and to Visit, Reform, Redress, Order, Correct and Amend all such Errors, &c. Abuses, Offences, Contempts and Anormities whatsoever, which by any manner of Spiritual or Ecclesiastical Power, Authority or Jurisdiction can, or lawfully may be, Reformed, Ordered, Redressed, Corrected, Restrained or Amended; and such Person or Persons so to be named, &c. shall have full Power by virtue of this Act, and of the said Letters Patents, to exercise, use and execute all the Premises according to the Tenor and Effect of the said Letters Patents.

See Sir Edw. Cokes 4. Inst. in his Chapter of Ecclesiastical Courts, fol. 324, 325. and see the 3d. Observ. fol. 326. observe the Words, viz. *It was Enacted out of necessity, &c.* and *ibid. Necessity did cause this Commission, and it was not to be Exercis'd, but upon necessity; for it was never intended, That it should be a continual standing Commission, &c.*

That the main Object of that Act was to deprive the *Popish* Clergy. See fol. 332 *Almere's Case*, and *Taylor and Massie's Case*, left to the proper *Diocesan*.

Upon

Upon the last recited Clause in that of 1. *Eliz.* was grounded the late Court call'd, *The High Commission Court*: From which Act it may be observed and collected, That it needed an Act of Parliament to give such Authority to the Queen to grant such Letters Patents, or Commission; and that without an Act of Parliament such Commission could not have been granted: For if the Queen by her meer *Prerogative* and *Supream Power* in Ecclesiastical Causes could have granted such Commission an Act of *Parliament* had been unnecessary. And the express Words of the Act are, That the Queen, &c. shall have power, (*by vertue of this Act*) and the Law had (as hath been before observ'd) distributed the Kings Ecclesiastical Power and Jurisdiction into several Courts: So that, *without a new Law*, the like Power could not be put into any other hands in Derogation of those ordinary Ecclesiastical Courts.

Secondly, Note, This Act makes no new Crimes nor Offences, but gives the Commissioners or Patentees Power to Visit, Reform, Redress, &c. all such Errors, &c. Abuses, Offences, Contempts and Enormities, which by any manner of Spiritual or Ecclesiastical Power can, or lawfully may be, Reformed, Redressed, Corrected, &c.

In Sir *Edw. Cokes* 12. *Rep. fol. 49*: It was Resolved, *Trin. 6. Jac. Per totam Curiam*, in the Court of *Common-Pleas* (there being then Five Judges of that Court, *Coke* being Chief Justice) That the High Commissioners by vertue of their Commission, and that Act of *Parliament*, ought to proceed according to Ecclesiastical Law. *Secondly*, If their Commission gave them any Power, which was not allowed or warranted by that Act of *Parliament*, it was not Legal (which proves that such Power cannot be exercis'd by a Commission under the Great Seal merely, without an Act of *Parliament*) See *Drakes Case* in Justice *Croke's* Reports of the time of King *Charles*, fol. 220.

There it is also Resolv'd, That the King by his Commissioners cannot alter the Ecclesiastical Law, nor the Proceedings of it.

And if the Word (*Lawfully*) had not been in that Act of 1. *Eliz.* yet it must have been so intended, and the Judges of the Common Law (who are proper Judges, Expositors and Interpreters of Acts of *Parliament*) would have so understood it; as appears by the Resolution of the Judges in the Case in the same 12. *Rep.* of the Lord *Coke*, fol. 84, 85. and little regard therefore was given by the Judges to Commissions under the Great Seal, which the Arch-Bishop of *Canterbury* (*Abbot*) said, had been made in like Cases in the Times of King *Hen. VIII.* and *Ed. VI.*

In

In the last Case, *ibidem fol. 85.* the Chief Justice *Coke* says, He had seen the Commission made to *Cromwell* (by King *Hen. VIII.*) to be Vice-gerent, and other Commissions to others (by his appointment) and he refers to the Commission at large inserted in his Book of Precedents.

See in the same 12. *Rep.* of Sir *Edw. Coke*, f. 88. Excellent Rules to be observ'd upon such extraordinary Commissions, *viz.* They ought to be solemnly read; for they may possibly contain many things against the Law (as the Commission in that Case mentioned did.) The Commissioners may every one of them require Copies of the Commission: The Commissioners ought to Sit in an open Place, and at certain Days.

Note also, That such Commissions ought not to be kept secret, but they ought to be Enrolled in the *Chancery*, That the Subjects may be under a known Authority. See Sir *Edw. Coke's 4. Instit. fol. 332.* the middle of that *fol.* And upon irregular and illegal Commissions in Ecclesiastical Causes, the Remedy is by Prohibition out of the Courts at *Westminster*.

4. *Instit.* 340.

In the same 4. *Instit. fol. 340.* the Author hath this Note. *Nota*, *Stephen Gardiner* Bishop of *Winchester* was depriv'd at *Lambeth* by Commission from King *Edward the VI.* made to Ten Persons, proceeding upon it, *ex Officio mero mixto vel promoto omni appellatione remota, summarie de plano, absque omni forma & figura Judicii sola Facti Veritate inspecta*: The Author passes no Opinion upon it. *Quare*, by what Law this was warranted. It must be rare and extraordinary, otherwise Sir *Edw. Coke* would not have so specially mention'd it, but a *Facto ad Jus non valet Argumentum*.

Note, That part of the Act of 1 *Eliz. viz.* the 18th. Paragraph (before *verbatim* transcribed) *viz.* of the Queen *Eliz.* and her Successors granting such Letters Patents or Commissions in Ecclesiastical Causes, is repealed by the Act made 16 *Car. I. cap. II.* See it in Mr. *Keeble's* Book of Statutes at large. See the last Paragr. or Clause in that Act of Repeal of 16 *Car. I.* It is Enacted, That no new Court shall be erected or appointed, which shall have The like Power or Jurisdiction, as the High Commissioners had or pretended to have; but that all such Letters Patents, Commissions and Grants, and all Powers and Authorities thereby granted, and all Acts, Sentences and Decrees to be made by vertue or colour of them shall be *Void*.

Note, The late Act of 13 *Car. 2. cap. 12.* in Mr. *Keeble's* Book of Statutes, does declare that the Ordinary Power of Arch-Bishops and Bishops was not taken away by that Repealing Act of 17 *Car. I. cap. II.* (as this last Act dates it.) But

But by this *Act* of 13 *Car.2. cap.12.* in the second *Paragraph*. The aforesaid Repealing *Act* of 17 *Car.1.* and all the Matters and Clauses therein contained (excepting what concerns the High Commission Court, or, *the new Erection of some such like Court by Commission*) are Repealed. See the third *Paragraph* also of the *Act* of 13. *Car.2.* That the *High Commission Court* shall not be Revived.

So that I conceive, no such *Commission* nor Letters Patents can now be granted, but the Repealing *Act* of 16, or 17 *Car.1.* stands in force against it.

By what Law or Rules *Cromwell* in the Time of King *Henry VIII.* and by what Instructions he acted, does not appear; the *Commissions* to make him *Vicar General* (which was surely in Imitation of what had been used by the Pope in the time of his *Ursurpation*) or that of *Vice-gerent* in Ecclesiastical Matters (which seems to be new and *prime Impressionis*) are not now to be found, of which *Dr. Burnet* in the History of the *Reformation of the Church of England*, makes some probable conjectures, fol. 181. and wherein consisted the difference between those two *Authorities* and *Titles*, and the *Commissions* for the exercise of them is not easy to find out: But the thing then principally design'd was to suppress the religious Houses belonging to the regular Clergy, which were great Supports to the *Papists* Hierarchy, not at all to impeach the Lawful Power and Jurisdiction of *Episcopacy*; for we find at the same time as *Cromwell's* *Commissions* were in force, and had been then but newly passed, That *Cranmer* Arch-Bishop of *Canterbury*, made his *Metropolitcal Visitation*; under which (as I conceive) most properly falls the Conusance of any contempt or abuse committed by any of his *Suffragan Bishops*; if not in a * *Provincial Synod*, *Archiepiscopi Jurisdictioni subsunt immediate Suffraganei*. See *Lind. Provin.*

Dr. Burnet's
Hist. of the
Reformation,
183. med. folii.

* See *Dr.*
Field of the
Church, fol.
511, 512. The
antient *Canon*
requires the
consent of 12.
Bishops to
censure, judge
and depose a
Bishop.

The exclusion of the Pope in the Time of King *Hen. VIII.* made no diminution of the Power or Jurisdiction of the Clergy, as to determining of Ecclesiastical Causes, or making Canons, Constitutions and other Synodical Acts, as is rightly observ'd by *Dr. Heylin* in his Introduction to the History of *Land* late Arch-Bishop of *Canterbury*; upon this ground it is, that to this day they exercise all manner of Ecclesiastical Jurisdiction in their own Names, and under the distinct Seals of their Offices, the Statutes that made some *Alteration* in the matter being all repealed: See *Dr. Heylin's* *Introduct.* aforesaid, *ibid.* fol. 341.

The Legislative Power in Matters Ecclesiastical continues in the *Convocation* for making Canons and Constitutions confirmed by the King and Parliament; Discipline and the Administration still resides in the Bishops and those under them.

In Case of any Irregularity in the Metropolitan, Resort must doubtless be to the Head of the Church upon Earth (the King) as it was in the Case of Arch-Bishop *Abbot*, who shooting at a Deer unfortunately kill'd the *Keeper*; and his Jurisdiction (he being suspended) was supplied by Commission, as you may read in Dr. *Heylin* of the Life of Arch-Bishop *Land*, in the 87th fol. of the Book it self, but more fully, fol. 170.

The Bishop of *London* is next in Place and Dignity to the Metropolitans, see his Priviledges, *ibid.* 185.

See Dr. *Heylin's* Judgment in the Work of Reforming the Church, either in Doctrine or Exercise of the Discipline, pertinent to the Matter now in hand, but in Point of Law it would be no very difficult thing to discover him to be mistaken, fol. 327.

* See Mr. *Bagshaw's* Arguments in Parliament against the Canons made by the Convocation, 1640 fol. 19.

See the Power of the Metropolitan, and of the *Appeal* from him to a Provincial Synod, and a Stop put there, and a *ne ultra*, and that there is no Vicar upon *Earth* appointed to be the Supream Judge in *Ecclesiastical Matters* in the Opinion of the Council of *Nice*, discours'd of by Dr. *Stillingsfleet* in his *Antiquities* of the *British Churches*, fol. 100. but still it must be understood, that this fixed Power in the *Ecclesiastical Judges* and Courts in *England*, is deriv'd from the Crown; but now under the Crown settled in this Method not to be interrupted; this is *quoad* * *Potestatem Jurisdictionis non Ordinis*.

F I N I S.





A dvertisement.

There are lately printed for Timothy Goodwin, at the Maidenhead
against St. Dunstan's Church in Fleet-street, the Three Books fol-

Edward Hales's Case.

II. The Power, Jurisdiction, and Privilege of Parliament; And the Antiquity of the House of Commons asserted: Occasioned by an Information in the King's Bench, by the Attorney General, against the Speaker of the House of Commons.

England; occasioned by the late Commission in Ecclesiastical Causes.

test of the Lordship's Trial.

Chamber.
in an action upon the Cate, and afterwards by River (and in the subsequent-
William Sommers Sheriff of Suffolk, Defendant, in the Court of King's Bench,
fers to Parliament, between Sir Samuel Barnardiston Plaintiff, and Sir
Together with an argument in the Great Cafe concerning Falsities of Plea-

of the Bath and into one of the Judges of the Court of Common Pleas
and Thence went by Sir Robert Akyns, Knight of the Honorable Order